S. HRG. 99-153

# REAUTHORIZATION OF THE CPSC

## HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

MAY 1, 1985

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# REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

WEDNESDAY, MAY 1, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON THE CONSUMER,
*Washington, DC.*

The subcommittee convened, pursuant to notice, at 9:45 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Kasten (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: David Zorensky, Chuck Harwood, staff counsels; and Loretta Dunn, minority staff counsel.

## OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. The committee will come to order.

Today the Consumer Subcommittee is holding a hearing on the authorization of the Consumer Products Safety Commission. Congress created the CPSC in 1972 to protect the public from injuries and deaths due to unsafe consumer products.

Unfortunately the CPSC has been without a formal authorization since the end of the 1983 fiscal year. We are here today to engage in an overall review of CPSC activities, but our primary concerns are the need for an authorization and appropriate funding levels for the agency to carry out its mandate.

It is my intention to hold broader, oversight hearings on the activities of the CPSC after we have acted on an authorization.

In 1983, Senator Ford and I introduced a new CPSC authorization bill, S. 861. That bill was favorably reported by the Commerce Committee and passed by the Senate. However, full enactment was blocked by controversy over the legislative veto.

In the next few days we will be introducing a new CPSC authorization bill similar to S. 861, the bill passed by the Senate in the 98th Congress. This bill will provide a 2-year authorization for the CPSC and it is my hope that Congress will pass this measure as soon as possible.

Such legislation is essential to reaffirm congressional support for the agency and to restore order to the legislative process.

Senator Ford is not here yet, but I have an opening statement by Senator Hollings.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today we will be considering the authorization of the Consumer Product Safety Commission (CPSC).

Although the budget of this agency is modest, its responsibilities are enormous for there are over thirty million product-related injuries a year. In 1981, in the last authorization which became law, we were discussing the Administration's plan to abolish the agency altogether. I am pleased to note that today, although the budget has been cut substantially in the last four years, we are no longer facing a battle with the Administration over the agency's very existence. If this issue should emerge again, I might add, I will be in the front lines fighting against it.

The Commission must have a healthy budget to fulfill its statutory mandate. The Administration has proposed a $1.3 million cut for fiscal year 1986 from the CPSC's 1985 appropriation. This agency's budget and staff have been cut by one-third since 1981. This hearing will focus on the proposed FY 86 budget for the CPSC and the testimony will help the Committee in making its decision on the appropriate authorization levels for the CPSC. Also, the witnesses at today's hearing will comment on what the CPSC has been doing to prevent deaths and injuries caused by consumer products.

Senator KASTEN. Our first witness is Senator SIMON.

## STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

Senator SIMON. I thank you very much, Mr. Chairman, and I am pleased to be here. I would like to enter my statement in the record. ,

Senator KASTEN. Without objection, so ordered.

Senator SIMON. Also I would like to enter into the record a list of serious amusement park accidents from the years 1980 to 1984.

Senator KASTEN. Without objection.

Senator SIMON. We have situations, Mr. Chairman, where we have had over the past decade 91 amusement park related deaths, 33 of them have occurred on fixed site rides. I just assumed that there was some kind of an inspection that was taking place.

That was an inaccurate assumption. And so because of an accident in Illinois, I started checking and I introduced legislation that was cosponsored at that point, by Congressman Henry Hyde of Illinois that passed the House that said, if the States or local governments don't provide inspection, then the Federal Government would. The Federal Government was doing that until 1981.

And I would like to see the Consumer Product Safety Commission renew that when the States don't take over. This is not a grab for Federal power or anything like that. It is an encouragement to States to do the job.

But frankly, if States don't do the job, then people who take their children—primarily we are talking about children—to rides in wherever the place may be, they ought to have the assurance that somebody is keeping track of problems.

And so I have introduced this legislation that calls for the Consumer Product Safety Commission to monitor the pattern so that if you have one particular ride in one State that is causing difficulties, they can examine that and then warn other States with the same rides.

You don't need to have the kind of repetition we have had where the State of Maryland, which has an excellent inspection program, prohibited a certain kind of a ride and the State of Pennsylvania didn't know anything about it and all of a sudden you have a fatality there.

I think we can improve things, and by just a modest step like this, we can move in the right direction. And I would urge the committee to move in that direction.

Senator KASTEN. Senator, we thank you for your participation in the hearing. I have no questions at this time. Senator Ford?

Senator FORD. Let me ask you one question, Senator. Do you have any idea what the additional cost would be? If you had been here a moment ago and listened to Commissioner Statler, they are reduced about 30 percent each year and there has been a feeling that this is a Commission that they want to abolish and it has been attempted on several occasions and has not transpired yet.

But instead of being able to reach out and do more things as the Consumer Product Safety Commission, they are being restricted by financial—what is it, a 36 percent reduction in employees?

Mr. STATLER. Thirty-six percent.

Senator FORD [continuing]. Reduction in employees. So even though your legislation is good, their ability to follow through on it is going to be dismal.

Senator SIMON. I think we have to bear this in mind as we look at how we fund for personnel. I think you are talking about a very few people.

Your former chairman of the Commission, Nancy Steorts, testified before the House that it would take very few people to do this. I think that is correct. What you are talking about is millions of people who are taking these rides and who assume, when they send their kids to take these rides, that there is some kind of protection. And in some States there is—I shouldn't say thanks to the tragedies—but because of the accident in Illinois, Illinois now does provide protection. But California, for example, a huge State doesn't provide it. I think if this kind of legislation would be approved, we simply ought to provide for a few more personnel in their budget. And in terms of total Federal budget we can find the dollars to do that.

Senator FORD. One thing, I have been interested for 10 years, I have been on this one subcommittee, and was chairman of it for awhile, we would be specifically telling the Commission for X number of dollars they would have to do certain things.

And I think we have to be very careful that we don't like apply a tax and designating that tax and once they get that money they always want a little bit more. But I would be very careful. And I hope we would look at your legislation when the time comes and you would work with us. I agree with you. I think we ought to do something.

But you look at the Consumer Product Safety Commission in the last 4 years particularly and it has been a percentage of reduction of almost 30 percent. When was the last time we authorized, 1981 and you have been on a continuing resolution ever since so that indicates that there is a need to either shore them up and do a good job with them or we are going to have to look at where to place them because they are not going to be there very long.

People are not going to be happy with the Commission because they have a responsibility and no funding to get the job done.

Senator SIMON. Let me just say to my good friend from Kentucky, I will be happy to join with you in seeing that we do what

we should here. The legislation I have introduced is not written into stone.

Any suggestions that anyone may have, I am willing to listen to and work with you. It seems to me we ought to come up with a good, practical answer here.

Senator FORD. We may have to have some innovative ideas to accomplish your purpose. I am willing to sit down with you.

Senator SIMON. I can't think of two people who can provide more innovative ideas than the gentleman from Kentucky and the gentleman from Wisconsin.

Senator FORD. That is what you call milk punch.

Senator KASTEN. Senator, we thank you very much for your testimony this morning.

Senator SIMON. I thank you very much.

[The statement follows:]

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

I want to thank my distinguished colleagues for allowing me the opportunity to testify this morning. During the course of reauthorization of a body as vital as the Consumer Product Safety Commission, it is fitting to address an issue over which the CPSC should have authority—fixed site amusement park rides.

Sometimes it takes tragic circumstances to propel us into action. Last year, a dozen people died senselessly because of a little-publicized exemption that the amusement park rides remained under the authority of the CPSC. Since 1981, amusement park attendees have had no guarantee that fixed-site rides have been inspected.

Amusement parks attract thousands of excited children and parents each year. A trip to Disneyland or Great America may be the highlight of the summer. Amusement parks are designed to entertain, delight, and thrill us. Danger has no role within amusement park gates. Unfortunately, without any guidelines for preventing and eliminating danger, there is mayhem on the midway. The screams of excitement can now all too easily turn into screams of terror.

Far too many amusement park related injuries occurred last year. With the increase in popularity of water-slides, the number of injuries has doubled in the last couple of years. The question is, "Can these fatalities and injuries be prevented?" To that, I answer a simple yes. Prevention is the key to promoting safety. My bill provides a three-pronged approach to assuring the public of a carefree day at the amusement park.

1. S. 702 will permit federal engineers to investigate serious accidents or fatalities that occur on fixed site rides.

2. S. 702 will authorize the Consumer Product Safety Commission to inspect fixed site rides only if the State in which the ride is located does not have an inspection program.

3. S. 702 will create a national clearinghouse, in the CPSC, to collect information on defective rides and notify other manufacturers of the same ride. This will prevent a defect in a ride in one state from impacting on a ride in another state.

Discussions with the industry have resulted in a change that I want to offer. To strengthen the prevention logic of the bill, federal pre-operational inspection should occur for new rides, if the state does not have an inspection program.

As of today, twenty-four states, including, I am pleased to say, Illinois, have passed laws which provide for inspection of amusement park rides. The industry has repeatedly stated that they would like jurisdiction over their operations to lie with the states. I agree with this desire and hope that all states will pass comprehensive laws. However, the citizens of California (where no state agency has jurisdiction) deserve the same assurances of safety that the citizens of Maryland (a state with an excellent program) receive.

A report by the House Committee on Energy and Commerce addressed an objection raised by the amusement park industry regarding the reporting of routine repair work. The Committee clarified the bill's intent by explaining that it does not expect the industry to report routine maintenance.

Commissioner Terrence Scanlon testified during last August's hearing in the House of Representatives that the CPSC did not have the expertise or the manpower to investigate the problems associated with amusement park rides. How many

more children or men or women must die before the CPSC realizes that priority must be given to amusement park rides?

Other proposals suggest operating an eighteen month commission to study the current laws and recommend a solution to the question of who should perform the oversight of the industry. In the meantime, how would we answer the parents of a child who has been paralyzed, while awaiting the suggestions of yet another commission. We have the opportunity to prevent more injuries and more deaths.

No industry should be exempt from oversight. Allowing the amusement park industry to investigate itself is like asking a naughty child to devise his or her own punishment. The airlines, a highly technical and intricate industry, do not police themselves. Should amusement park rides, some of which are more complex and sophisticated than some aircraft, be exempt from inspection? Of course not.

Some years ago, Hollywood treated us to a flurry of thriller movies: "Airport," "The Towering Inferno," "Jaws." A movie called "Rollercoaster" was also produced. As you can imagine, the plot focused upon a horrible accident in an amusement park. In the interest of the citizens of this nation, let us leave such dangers to the movie screen.

Mr. Chairman, again, I thank you for this opportunity to bring the Amusement Park Safety Act to the attention of this committee.

AMUSEMENT PARK ACCIDENTS—1980 TO 1984

1984

June 2.—New Jersey Amusement Park:
Fatal fire inspires Pennsylvania lawmakers to tighten reins on thrill rides.

May 30.—Gurnee, Illinois—Great America:
Three boys plunged 60 feet to the ground on the ride called "The Edge" during the car's ascent to the top. Accident occurred on May 22, 1984.

May 28.—Atlanta, Georgia:
Miniature airplanes crashed into one another stranding riders aloft. Thirty-three riders experienced bruises and sprains.

May 26.—Pontiac, Illinois:
One person died of multiple injuries approximately fifteen minutes after an accident on a carnival ride.

May 14.—Hershey, Pennsylvania at Hershey Park:
Two children were thrown from the ride, the "Timber Rattler." Park officials claimed that there were no mechanical problems with the ride.

April 27.—Conway, South Carolina—Magic Harbor Amusement Park:
A 13-year old girl was killed when thrown from the "Black Witch" roller coaster ride at Magic Harbor Amusement Park on April 3, 1984.

March 20.—Sarasota, Florida—Sarasota County Fair:
Fourteen people were hurled off a ride at Sarasota County Fair; they suffered minor injuries.

Feb. 15.—Santa Ana, California—Disneyland:
A 48-year old woman was killed on Disneyland's Matterhorn bobsled ride as it proceeded down the manmade mountain.

Jan. 24.—Santa Ana, California—Knott's Berry Farm:
A boy was crushed beneath the wheels of a stagecoach at Knott's Berry Farm.

1983

Dec. 30.—Largo, Maryland—Wild World Amusement Park:
Parents filed a suit against operators of Largo Theme Park after their child drowned at Wild World Amusement Park. Park officials denied that the machine that generates waves was not operating at the time of the accident.

Nov. 10.—Farmington, Utah—Lagoon Park:
A teen is suing for $11 million after losing an arm while working on Lagoon Park's ride, "Colossus."

Oct. 31.—Santa Ana, California—Knott's Berry Farm:
A teen climbed out on the safety rail of a "parachute ride" gondola at Knott's Berry Farm Amusement Park and fell more than 100 feet to his death.

Sept. 11.—Doswell, Virginia:
A youth sat alone on the back of a four-seat car of a roller coaster when an accident occurred.

Sept. 6.—Agawam, Massachusetts—Riverside Amusement Park:

Seven people riding on a roller coaster, called the "Cyclone Coaster," in the Riverside Park suffered minor injuries when a set of cars ran into the rear of the "Cyclone Coaster."

Aug. 28.—Rye, New York—Rye Playland:

A woman was slightly injured when she was thrown from a car on a high-speed ride at Rye Playland owned by Westchester County.

July 30.—Houston, Texas—Astroworld Amusement Park:

A roller coaster plummeted backward off its tracks at Astroworld Amusement Park during a safety test killing one person and injuring three others. Cause of accident: a safety mechanism had been bypassed.

May 15.—Kings Island, Ohio:

A boy was killed after he fell from the "Eiffel Tower."

April 4.—Surfside Beach, South Carolina—Magic Harbor Amusement Park:

A girl fell from a ride and died shortly thereafter.

March 24.—Santa Ana, California—Disneyland:

A young man fell from Disneyland's Space Mountain ride and was seriously injured.

1982

Trenton, New Jersey—Vernon Valley Action Park:

A man was electrocuted last summer in an amusement park water ride. Tests of a pump in the White Water Kyak ride three days after the fatal accident had found an electrical leak of nine amps.

July 23.—Anniston, Alabama:

A Jacksonville man was injured in an accident at Six Flags over Georgia. Possibility of broken vertebra and a bruised stomach.

July 21.—Grand Prairie, Texas—Whitewater Amusement Park:

Thirteen children were treated for exposure to poisonous chlorine gas. Officials at the park installed a safety feature in the children's pool to prevent similar accidents.

June 15.—Lake Buena Vista, Florida—Walt Disney World:

An 18-month-old child was killed when she fell from a seven-car train.

June 12.—Santa Clara, California—Marriott's Great America:

The Whizzer roller coaster ride was closed twice when accidents ended in the death of a boy (May, 1980) and injuries to about 24 riders. Worn tires were said to be the cause of the accidents.

May 30.—Ocean City, Maryland:

A man was seriously injured when he fell from high atop an amusement park ride and tumbled via the machinery before landing on the ground.

Feb. 28.—Albuquerque, New Mexico:

A 14-year-old boy died in a racing accident while driving one of the cars.

1981

Sept. 8.—Wildwood, New Jersey:

A girl had part of her scalp torn away after her pigtails tangled in the park's machinery on "one of the safest rides" in the amusement park. She and her parents entered a tunnel on the boat before the accident occurred.

Sept. 6.—Kenosha, Wisconsin:

A three-year-old boy died of head injuries he suffered when thrown from an amusement park ride at a county fair.

Aug. 27.—Camden, New Jersey—Ocean County Amusement Park:

A 20-year-old ride operator fell 42 feet to his death from a roller coaster at Great Adventure, a large Ocean County amusement park.

Aug. 26.—Sandusky, Ohio—Cedar Point Amusement Park:

A young man and woman were treated for minor injuries when the "Corkscrew" ride malfunctioned.

Aug. 11.—Orange, California:

Seven teenagers suffered minor cuts when a hole developed on a 68 foot water slide.

July 31.—Orlando, Florida—Disneyworld:

A woman drowned in a canal while trying to find her car in a dark parking lot at Disney.

July 20.—Bristol, Connecticut—Lake Compounce Amusement Park:

A teenager died from injuries she sustained when she fell from a roller coaster.

July 9.—Traverse City, Missouri:

A 14-year-old deaf boy was critically injured in a freak accident on a ride at a Northern Missouri resort. He went into a coma shortly after the accident.

June 9.—Gurnee, Illinois—Marriott's Great America:

A gas leak near two "flume rides" sent 53 people to area hospitals.

May 24.—Irondequoit, New York—Sea Breeze Park:

A 14-year-old girl was killed when she got off the ride.

1980

Aug. 30.—Dallas, Texas:

The Swiss Sky Ride fell, killing one person and injuring 17 others.

Aug. 20.—Shreveport, Louisiana:

Failure of a hydraulic valve caused an amusement park ride called the "YO-YO" to drop about 12 riders to the asphalt below.

Aug. 17.—Denver, Colorado—Elitch Gardens Amusement Park:

A coaster train ran into the back of another train that had been stopped by a fallen tree limb.

July 13.—Agawam, Massachusetts—Riverside Amusement Park:

More than 20 people suffered bumps and scratches when the "Round-up Ride" made a hard landing.

July 2.—Memphis, Tennessee—East Memphis Amusement Park:

A girl was paralyzed after a water slide collapsed. The cause was attributed to too many youngsters crowding onto a flume designed to hold no more than two people at one time.

June 7.—Anaheim, California—Disneyland:

A young man was killed when he climbed from a moving car of an elevated train and was struck by another car from the opposite direction.

May 28.—St. Louis, Missouri—Six Flags:

A tram collapsed killing a 12-year-old girl.

Senator KASTEN. We will now hear from the CPSC, the Honorable Terrence Scanlon, Chairman, Mr. Statler, Sandra Armstrong and Carol Dawson. If you could come forward.

It is my understanding that Ms. Armstrong is not here. We will begin then with the Chairman of the Consumer Products Safety Commission.

**STATEMENT OF HON. TERRENCE M. SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION, ACCOMPANIED BY STUART M. STATLER, AND CAROL G. DAWSON, COMMISSIONERS; LEN DEFIORE, EXECUTIVE DIRECTOR; AND DAN LEVINSON, GENERAL COUNSEL**

Mr. SCANLON. Thank you very much. I would like to introduce to you the panel: Stuart Statler on my far left; Carol Dawson, our newest Commissioner, to my immediate left; on my far right, Len Defiore, our Executive Director; and to my immediate right, Dan Levinson, our General Counsel.

I am pleased to appear before you today as Chairman of the Consumer Product Safety Commission. I have a formal statement, Senator Kasten, that I would like to submit for the record and then I will abbreviate this one, if that meets with your approval.

Senator KASTEN. Without objection, so ordered.

Mr. SCANLON. Our Commission is charged with protecting the public against unreasonable risks of injury from consumer products. The accomplishment of its mission largely hinges upon the sound interpretation of principles of economics consistent with the demands for prudent health and safety regulation of the marketplace.

The consequence of a CPSC decision may literally mean life and death for consumers. Equally, a Commission mistake can devastate a small manufacturer.

I pledge to continue the vigorous enforcement of our consumer product safety laws, taking full account of the costs and benefits that attend Commission decisions. The CPSC has played an important role in product safety over the past decade. Today I would request a 3-year reauthorization of the Commission so that its important work may continue.

Since its inception, the CPSC has spent over $400 million to foster consumer product safety. Now our challenge is to ensure product safety and contribute to reducing our Nation's deficit. This issue is not one of more dollars for the Commission, but of a balanced and cost effective approach toward product safety.

We are achieving that goal to the benefit of all Americans in their capacity both as consumers and as taxpayers.

The Commission is becoming more efficient and more effective. Administratively, we are streamlining our management for stronger regulatory and enforcement activities.

On a broader level we are aggressively pursuing voluntary standards as an effective, cost efficient, and timely alternative to mandatory standards as contemplated by Congress in 1981 when it last authorized the Commission.

Mr. Chairman, let me address our administrative and productivity improvements. We have targeted priorities and improved our internal structure. As a result of a current management review, we expect additional improvements by making appropriate changes in the way we do the government's business.

Good management, of course, furthers our mission. Here are some important examples: Reporting and recalls: the monitoring of potentially unsafe products and recalls has remained vigorous. Already, we have received 127 section 15 reports in the first 7 months of fiscal year 1985 compared to 128 for all of fiscal year 1984. There were nearly as many recalls in fiscal year 1984 as there were in fiscal year 1980.

Civil penalty actions: Our enforcement activities continue to match past results. From March 1977 to December 1980, civil penalty actions initiated resulted in actual payments of $1,358,900. However, during a comparable 2-year period from February 1981 to March 1983, with leaner budget years and fewer staff, active enforcement activities netted $1,304,500.

State and local cooperation: The Commission will give special emphasis to actively encouraging State and local cooperation. We will further decentralize Commission resources in the field and work closely with local entities.

Voluntary standards: Achieving product safety by distrust of industry is unnecessary and counterproductive. The spirit of cooperation embodied by Congress' 1981 mandate, voluntary standards first and mandatory standards as the last resort, is sound public policy. By working together with industry and consumer interests, we may never return to an era where Government mandated regulations are the norm.

Of course, this Commission shall ensure that consumer protection laws are obeyed. If there is not compliance we will use our full

statutory power. However, voluntary standards promote product safety efficiently and effectively. They provide protection more quickly and require fewer Commission resources.

Two examples of the voluntary cooperative approach to product safety are chainsaws—where the industry worked for 3 years on a voluntary standard to minimize kickback injuries which previously had resulted in 22,000 injuries per year—and gas space heaters—where virtually all manufacturers complied with a voluntary standard which adequately reduces the risk of carbon monoxide poisoning and which permitted the Commission to withdraw its mandatory standard in favor of a voluntary one. This year we plan voluntary standards involving more than 50 products.

Other activities: The Commission has also improved the efficiency of its information and education programs. Let me highlight just two examples. Poison prevention: Each year more than 100,000 children under the age of 5 will be victims of accidental ingestion. The Commission cosponsored National Poison Prevention Week to promote child-resistant, bottle topped closures.

Safety for older consumers: The Commission has initiated a major public information effort concerning safety for older consumers. Notice of this program will accompany each Social Security check this month.

The Commission is prepared to meet product safety challenges. We are alarmed at the 125 deaths and 100,000 injuries related to all terrain vehicles in the last three years. We have commenced a major program to address safety concerns associated with these vehicles. This initiative includes public hearings, hazard and engineering analysis and voluntary standards development.

We will also issue the first advanced notice of proposed rulemaking in many years. Last year I was pleased to support the Chairman's bill, the Toy Safety Act of 1984. It is now easier for the Commission to recall hazardous toys and children's articles. We are confident that its provisions will provide greater protection to our nation's children.

We have made substantial progress in enhancing consumer product safety, despite budget and staff constraints. To ensure that our efforts have a lasting impact on product safety, however, requires our continued efforts. Accordingly, I respectfully request that the subcommittee favorably entertain our requests for a 3-year reauthorization.

I would be pleased to answer any questions at the appropriate time.

[The statement follows:]

STATEMENT OF HON. TERRENCE M. SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman and members of the subcommittee. I am pleased to appear before you today as Chairman of the Consumer Product Safety Commission. The Commission is charged by the Congress with the responsibility for protecting the public against unreasonable risks of injury from consumer products. As Chairman, I believe I have a special responsibility to share with you my own views of the Commission's work and the appropriate role of the Commission with our Government and throughout our economy.

At the outset, I wish to reaffirm my personal commitment to sound consumer product safety regulation of the marketplace. During my confirmation hearing for commissioner, I noted that the consequences of CPSC decisions may literally be of a

life and death nature for individual consumers exposed to dangerous products. At the same time noted, a commission mistake could have devastating effects on small manufacturers, and those that depend upon them for their livelihood. I pledged then, as I pledge now, to enforce the law vigorously, and as Congress so requires, to do so in a manner that takes full account of the costs and benefits that attend Commission decisions.

The CPSC has played an important role over the past decade in bringing product safety to the American home and marketplace. I appear before you today to request a three-year reauthorization of the Commission because its work is not done. In the course of my comments, I will identify areas of recent activity, and plans for future action that justify this reauthorization request. Importantly, I will demonstrate how the Commission's increasing activity in voluntary standards is having the desired effect of bringing real benefits to American consumers, at lower costs, as contemplated by Congress when, in 1981, it last authorized the Commission.

## CPSC'S CHALLENGE

In the last eleven years, over $400 million of taxpayers' monies has been spent by CPSC in fostering consumer product safety. This year our challenge is to carry out our mandate for product safety and contribute to the efforts by the President and the Congress to trim our nation's deficit.

The Commission has seen years of larger budgets. However, the issue is not more dollars but a balanced and cost-effective approach to achieving the goal of product safety. I believe the record demonstrates that the goal is being achieved at levels of efficiency and economy that redound to the benefit of Americans in their capacity both as taxpayers and as consumers.

## THE APPROACH

In this era of budgetary constraints, the Commission is becoming more efficient, and, I am pleased to report, even more effective. Two important initiatives account for much of this improvement. First, on the administrative level, we are streamlining our management systems in ways that are producing demonstrably strong regulatory and enforcement activities. On a broader policy scale, we are pursuing voluntary standards development agressively, and as Congress foresaw in 1981, the voluntary standards process is an effective, cost efficient and timely alternative to mandatory standards.

## MANAGEMENT EFFORTS

Mr. Chairman, let me first address our administrative initiatives and how they have translated into improvements in our productivity. We have carefully targeted priority projects, improved the Commission's internal structure, and emphasized personnel shifts from support to hazard programs, and we plan to do more. A management review will analyze the agency's long-term research activities and costs, review operations and study the current matrix management system. Ultimately, we expect to reap additional productivity improvements by making appropriate changes in the way we do the government's business.

Good management, of course, can make a real contribution to furthering an agency's mission. This is plainly the case for CPSC. Here are some important examples:

Reporting/Recalls—Section 15 is an important function which monitors industry reporting of potentially unsafe or defective products and initiates recall action. Our Section 15 activity has remained vigorous. In fiscal year 1984, 128 Section 15 reports were received compared to 121 in 1981, and for the first seven months of 1985, we have already received 127 reports. Recall actions have also kept a steady pace. In 1984, there were 106 recall actions, which is nearly as many as the 132 in 1980, 56 such actions already have been initiated this year.

*Civil Penalty Actions.*—Obtaining comparable or even greater enforcement results that previous years is a challenge we gladly accept. From March 1977 to December 1980, civil penalty actions initiated resulted in actual payments of $1,358,000. However, during a comparable two-year period from February 1981 to March 1983, in leaner budget years and with fewer staff, active enforcement activities have netted $1,304,500.

*State and Local Cooperation.*—Actively encouraging state and local governments to supplement product safety approaches enhances and leverages our Compliance and Enforcement, Hazard Identification and Outreach activities. State and local cooperation will be established as an ongoing program, and given special emphasis by

the Commission. We will further decentralize Commission resources in the field and work closely with local entities.

VOLUNTARY STANDARDS

Achieving the goal of product safety by harboring a basic distrust of industry is unnecessary, and often counterproductive. I believe that the spirit of cooperation that the Congress embodied in the CPSC's mandate of 1981—voluntary standards first and mandatory standards only at the last resort—is good law and sound public policy. If we in government work together with industry and consumer interests, as I think we can, we may never return to an era where government-mandated regulations are the norm.

Of course, this commission shall continue to ensure that manufacturers of consumer products obey the dictates of the law. If an industry or an individual manufacturer is in noncompliance with our requirements, we can and will use the full array of our statutory powers.

As Congress foresaw in 1981, however, voluntary standards are an excellent way to promote product safety efficiently and effectively. Typically they produce more protection in a shorter period of time. Furthermore, they require less government staff, trigger less litigation and cost fewer dollars.

Two recent notable examples of the voluntary, cooperative approach to product safety are the following:

*Chain Saws.*—Our reporting system discovered some 22,000 injuries per year caused by "kickback" from chain saws. The industry worked for three years on a voluntary standard that would minimize this kickback. The manufacturers contributed to the research expense. A workable, effective standard is now in place which CPSC monitors closely.

*Gas Space Heaters.*—In response to requests from many state and local governments, the Commission withdrew a mandatory standard on unvented space heaters which had preempted local regulations, in favor of a voluntary standard which provided even greater consumer safety. The localities had requested exemption from preemption in order to continue to enforce their own standards addressing the risks of carbon monoxide poisoning. Virtually all manufacturers now comply with the ANSI voluntary standard today which adequately reduces the risk of injury from carbon monoxide poisoning.

This year we have plans to develop or revise voluntary standards involving more than 50 products, including kerosene heaters, upholstered furniture, gas heating systems, portable electric heaters and others.

OTHER ACTIVITIES

Another significant area where the Commission has improved the reach and scope of it resources is our Information and Education program. Let me highlight two examples:

*Poison prevention.*—A recent study from Birmingham, Alabama, reveals the disturbing statistic that 36 percent of all prescription drugs swallowed by children under 5 involve grandparents' and parents' medication. It is estimated that more than 100,000 children under the age of 5 will be victims of accidential ingestion annually. Eager to disseminate this information as widely as possible, the Commission cosponsored National Poison Prevention Week with the Poison Prevention Week Council and used the occasion to warn both grandparents and parents of the need to employ child-resistant bottle-top enclosures.

*Safety for older consumers.*—The Commission's finding that the elderly are often victims of falls from stairs, ramps or landings led to a major public information effort concerning safety for older consumers. The Commission in cooperation with other federal agencies will produce and disseminate the illustrated "Home Safety Checklist" to the 660 Area Agencies on Aging throughout the United States. Notice of the availability of this booklet will be sent, this month, in the mailing of millions of Social Security checks.

The Commission is prepared to meet the consumer product safety challenges of today, and in the years ahead. Recently for example, the commission noted with alarm the rising deaths and injuries associated with All Terrain Vehicles. There have been 125 deaths and over 100,000 injuries in the last 3 years. The Commission has now commenced a major program to address the safety concerns with ATV's quickly and efficiently. Our multi-point plan includes issuance of an Advanced Notice of Proposed Rule making (ANPP), the first in many years, hazard analysis, engineering analysis, public hearings, information-shaping with user groups and local governments, and voluntary standard development.

Last year I was pleased to support the Chairman's bill, The Toy Safety Act of 1984. Before the bill's enactment into law, it was often easier for the Commission to recall hazardous products intended for adults than it was for the agency to recall hazardous toys and children's articles. We are confident that its provisions will provide greater protection to our Nations children.

CONCLUSIONS

We have made substantial progress these last few years despite budget and staff restraints. While we are encouraged and confident of our progress, we believe that much of what has been accomplished will have a lasting impact on product safety only with our continued efforts. Accordingly, I respectfully request that this subcommittee favorably entertain our request for a three-year reauthorization.

I would be pleased to answer any questions you may have.

Senator KASTEN. We thank you. It is my understanding that the other Commissioners have brief statements, is that correct?

Mr. SCANLON. That's correct, Mr. Chairman.

Senator KASTEN. All right.

The Honorable Stuart Statler.

Mr. STATLER. Mr. Chairman, Senator Ford, let me first take the opportunity to thank both of you for convening this hearing and to express our thanks on behalf of the Commission to the leadership both of you have exercised on behalf of this Commission. In the absence of a reauthorization during the last several years, your continuing guidance has been of immeasurable help to us in permitting us to fulfill our congressional mandate.

Rather than take the time to read any statement, I would ask that my entire statement be placed in the record and simply state to you the four concerns that I have that I would hope that this committee would address. First concerning the reauthorization period, if the Committee sees fit, set for an extended period rather than a lesser period, 3 years at a minimum, possibly longer.

Second, in terms of appropriate authorization levels, we are down from our 1974 levels by some 53 percent in terms of real dollars. Just since 1981 we are down by 36 percent in terms of dollars, and another 36 percent in terms of staffing. Anything that this committee can do in terms of setting more realistic appropriation levels and possibly entertaining the idea of a personnel floor would assist this Commission in being able to perform those responsibilities that the Congress has given us.

Senator FORD. Could I ask you a question? Are you getting the feeling somebody is trying to annihilate you?

Mr. STATLER. If not annihilate I would say eviscerate us. We are hurting. The fact of the matter is that we can be so effective in terms of what we do, but there are all kinds of perils out there, risks we would like to be addressing that we can't. So we set our priorities, but those priorities must necessarily leave out or not appropriately address so many of the real concerns that the American people have.

Third, in terms of section 6(b) of our act, we are the only Federal regulatory agency that has this kind of restrictive provision that impacts on our disclosure. If it were otherwise, the National Highway Traffic Safety Administration, if it had an act like ours, could not reveal the defects that are in automobiles and tires as readily as they do, and the Food and Drug Administration would not be

able to alert the public to the serious risks associated with food, drugs, and cosmetics.

We continually find that our hands are tied, that delays are occasioned by virtue of our wanting to get information out to the public and not being able to. In point of fact, we have 1360 FOIA requests just building up because of the processing time it takes under 6(b) disclosure provisions. It literally takes on the average of 30 hours per 6(b) request compared to 2 hours for any non-6(b) request.

So I would urge that the Committee look at this problem. And, I have made suggestions in the past and in my testimony today that you have before you as to how to deal with this problem.

Finally, I know Senator Simon was expected to testify on amusement rides. To me, it is a sheer idiocy for one product; namely, fixed site amusement rides, to be kept out of the jurisdiction of this Commission.

There are those who say: "Well, you don't want 600 inspectors going around the country looking at every amusement ride." You can't do that and that is not what we intend. When we seek jurisdiction, what we are asking for is the authority, just like the National Transportation Safety Board has when there is a major plane accident, to go in immediately and investigate. When there is a major schoolbus, truck, or railroad accident, the Board can go in immediately and investigate.

We can't do that when a fixed-site amusement ride causes serious injury or death. Only if it happens to be a mobile ride, one that has gone from one jurisdiction to another, can we send our investigators in.

Jurisdiction would also permit us, when we find a substantial product hazard, something that can cause serious injury to the public at large, to impose a corrective action plan on the manufacturer and owner/operators of that ride or those rides. Further, jurisdiction would impose upon the owner/operator or manufacturer responsibility that every other manufacturer and retailer and owner/operator in this country has with respect to all consumer products to report any substantial product hazard or defect to the Commission. This would put us on alert to be able to go in there and check out that ride in order to avert any tragedy or further recurrence or repeat of a tragedy under circumstances where it is most likely.

And so, these are the four things that I urge this committee to consider. And, were you to take that kind of action, I think that this Commission would be able to continue to represent the American public against the kinds of risks, the kinds of perils that Congress originally intended in 1974 and that I believe that this panel has long encouraged us to do.

Thank you very much.

[The statement follows:]

STATEMENT OF STUART M. STATLER, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman, thank you for the opportunity to offer my observations concerning the reauthorization of the CPSC. I want to emphasize the desirability of an extended reauthorization period, as well as the pressing need for adequate resources to allow this agency to fulfill its vital safety mandate. I also plan to highlight the urgency for reform of the Section 6(b) disclosure provisions in the Consumer Product

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Safety Act, which unduly restrict us from alerting the public to emerging safety concerns. And, once again, I want to urge that Congress restore jurisdiction to the Commission over fixed-site amusement rides.

EXTENDED AGENCY TENURE

While always pleased to come before your Committee, I'm sure you are aware that reauthorization proceedings held every other year are an exceedingly intensive undertaking for the CPSC. Considerable staff time is expended to prepare for the complete review of our enabling legislation. The sheer volume of material produced is hard evidence of our prodigious effort to detail the agency's performance. For each reauthorization, hundreds of pages are developed in response to House and Senate Committee inquiries.

All this is time away from progress on hazard concerns. It is frustrating to see the too-closely spaced reauthorization efforts slow the pace of our safety efforts. Worse, is the impact of a biannual reauthorization effort on staff attitudes and morale. Reauthorization generates anxiety and turmoil, as rumors of impending difficulty invariably spread. Staff morale plummets whenever the fate of the agency hangs in the balance. We lose good people, and often can't attract suitable replacements. Staffers see their substantive efforts sidetracked for weeks (sometimes months) on end.

An extended reauthorization period of several years—perhaps three to five years—would go far toward redressing this problem. It would give the agency an adequate period in which to dedicate resources directly to resolving critical product risks. It would imply a Congressional imprimatur—stronger than ever before—signaling that you're behind this agency and expect that its important mandate will be fulfilled. And all the while, Congress would retain tight control over the agency through periodic oversight hearings, on policy matters as well as on any specific hazard or topic.

SUFFICIENT AGENCY RESOURCES

Realistic funding and a specified personnel floor would likewise assist the Commission immeasurably. The devastating budget and personnel slashes over the last several years have steadily sapped the Commission's strength. Taking inflation into account, the past five years show a whopping 36% cut in funding, down from $42,140,000 in FY '81 to our proposed FY '86 level of $33,700,000. The past 5 years also evidence the evisceration of CPSC's staff. The OMB-imposed level of 568 FTE's for FY '86 also represents a 36% swipe since FY '81, when 889 FTE's were onboard.

The bottom line is ominous—both staff and funding have been slashed over one-third since 1981. Worse, twelve years after this agency's first budget of $30,900,000 in FY '74, our FY '86 OMB mark of $33,700,000 represents a decrease in real dollar terms of 53%! Simply to match CPSC FY '74 budget, our FY '86 budget would have to be nearly $71 million dollars. Yet, OMB forecasts a mark of $33.7 million for the next several years and yet another cut of 18 staff positions for FY '87, down to 550 FTE's. This OMB plan doesn't even contain adequate resources to cover the effects of inflation on our paltry budget!

No other federal health or safety regulatory agency comes anywhere close to this precipitous decline. In fact, EPA's budget has jumped 87% during the same period and OSHA's has risen 32%. The following chart demonstrates our predicament all too clearly:

| Agency | Fiscal year 1974 funds | Fiscal year 1986 proposed operating funds | Fiscal year 1986 funds converted to fiscal year 1974 dollars | Percent increase or decrease |
|---|---|---|---|---|
| EPA | 528,000,000 | 2,268,000,000 | 988,666,000 | +87 |
| OSHA | 70,408,000 | 213,059,000 | 92,877,000 | +32 |
| FDA | 160,590,000 | 409,072,000 | 178,323,000 | +11 |
| FTC | 32,334,000 | 63,934,000 | 27,870,000 | −14 |
| NHTSA | 142,715,000 | 245,500,000 | 107,018,000 | −25 |
| CPSC | 30,900,000 | 33,700,000 | 14,690,000 | −53 |

Let me focus on just one glaring illustration of our resource crisis: With virtually all of our dollars and staff time already committed for FY '85, we've recently identified one of the most dramatic surges in deaths and serious injuries that this agency

has ever witnessed. It involves 3-wheel all-terrain vehicles, or ATVs as they're called. Serious injuries have jumped nearly eight-fold in the last three years from 8,585 in 1982, to 27,534 in 1983, to 66,956 in 1984. We know of 125 ATV-related deaths during the same period. And we know the figure for 1984 is incomplete at that. Most disturbing is that 44% of these fatalities were to kids under 16, 22% to kids under 12, and some were as young as 4-7 years of age. To make matters worse, skyrocketing sales are putting thousands more ATVs onto the marketplace every week, with sales of 780,000 expected in 1985, up from 650,000 last year and 136,000 just five years ago.

For years we have used hospital emergency room reports and other statistical tools to stay on top of emerging hazards. Now having identified ATVs as perhaps the most urgent "blip" ever to appear on our hazard screen, we're poised to swing into action. But to do that meant first deciding what other worthy projects to drop or delay in order to "free up" resources for the pressing ATV work.

Sacrificing those vital projects is exceedingly disruptive. For example, efforts planned to assess the effectiveness of industry's proposed voluntary standard to deal with chain saw kickback will be delayed well into FY '86 or later. Dead in its tracks, for now, is the joint effort planned with that industry to address non-kickback injuries, responsible for some 85,000 medically attended injuries annually. Here an industry—committed to reducing tragedies—wants our continued help. But because of lack of funds and staffing, we have to renege.

Surely Congress envisioned something other when it created CPSC 12 years ago. This resource crunch goes much beyond scarcities resulting from our new ATV project. Our fiscal straits dictate that dozens of pending projects have been stopped, delayed, or can't get off the ground, thus needlessly risking the lives of unsuspecting American families. Many other deserving projects were scrapped before even making it into our austere budget submissions of the past several fiscal years. This didn't happen because they lacked worth or because they wouldn't save a good number of lives.

The worthy projects on our cutting room floor range from reducing hundreds of child drownings and diving tragedies to youngsters in backyard swimming pools to cutting back on airborne microbes that can infest the heating and cooling systems of our homes; from correcting the explosion risk from damaged flexible connectors in gas appliances to determining why some circuit breakers fail to "trip" and prevent home fires and electrocutions; from minimizing the disfiguring burns caused by electric deep-fat fryers to averting the tragic crunching of young children by unyielding automatic garage doors.

These projects and so many others aren't found in our recent budgets or our proposed FY 86 budget, but the risks associated with them abound in our homes, causing death, serious illness and injury, and wholesale property destruction. The projects aren't drawn from some pie-in-the-sky wish list—they're basic to our operation, because the risks are ever-present. We wish they weren't in such abundance, but they are.

At the rate we're going, the CPSC can be nickled and dimed—a 5% cut in staff here, a 10% cut in monies there—for a few more years before we're so emasculated we won't be able to do meaningful safety work on any project. But, this Committee could help to reverse the erosion of fundamental protection against risks around the home that the American public rightfully expects and deserves. It can do that by mandating a specific minimum personnel level for the Commission, as well as realistic authorization levels. Together, a personnel floor and adequate funding should help stem the tide against the insidious decline in this agency's ability to prevent potential risks from ever seeing the light of day.

Congress originally created the CPSC to stay on top of injury trends, to stop needless risks before many—or any—consumers are hurt, and to do the underlying research and investigative work that this task requires. The blunt truth is that we can't faithfully carry out this mandate with the proposed FY '86 budget of $33.7 million and 568 FTE's. And the future looks even more bleak as long as the folks at OMB remain opposed to doing anything to promote consumer safety other than redesigning the behavior of consumers rather than, where appropriate, supporting needed monies, personnel, and research to redesign hazards out of products.

### DISCLOSURE OF INFORMATION

Contrary to anything you may have been told, whimsy has never controlled CPSC's actions in informing the public about product risks. For its first seven years, the agency applied a rule of reason. Publications, press releases, and the like contain information based on official agency findings. These affirmative disclosures

carry the Commission's endorsement. Accordingly, we thoroughly checked this information for accuracy and fairness before release, and met all other 6(b)(1) safeguards.

But, as you know, subsequent judicial and legislative action landed us in a morass of procedures. As detailed in last year's 6(b) regulation, we now have an incredibly cumbersome and costly maze of disclosure requirements. For FY 1984 alone, about 20 staff years and $1.62 million dollars were consumed in processing information requests. Of this, 13 staff years and $520,000 were used specifically to satisfy 6(b).

Requests come in for agency briefing packages, Federal Register notices, advisory opinions, technical reports, meeting logs, advisory committee transcripts, consumer complaints, in-depth investigations, compliance-related matters, records of agency actions, and copies of requests under the FOIA, to name a few. On average, astoundingly, 30 staff hours in our Secretary and General Counsel offices are required to answer each FOIA request that contains 6(b) information. This stands in stark contrast to the 2 hours needed per routine (non-6(b)) inquiry. And these numbers don't even include the time of other directorates on 6(b) chores.

Such costs tax our sparse resources. But expense is not the only reason to seek amendment of 6(b). More importantly, the attendant delays often have the added effect of stifling our ability to timely provide requested information about suspected or known product risks.

Usually FOIA requests are handled on a first-in, first-answered basis. However, there are no shortcuts to the handling of a document listing several dozen companies possibly involved in a violation of an agency standard; no timesavers in processing an 800-page substantial hazard file, supplemented by a 50-page company response objecting to release, or take a simpler example. A FOIA request may be seeking a document which lists 30 manufacturers. This document must first be purged, and then 30 copies made and readied for mailing to each of the named firms for 6(b) comments. No company can receive a document, which lists any other company name. Meanwhile, other FOIA requests may be held up. Thus all other requestors are inconvenienced, since delay knows no privilege. A FOIA request from an industry trade association for our findings on indoor air quality testing which happens to contain company names, or a consumer's request for the same, both languish while our staff secures the laborious 6(b) clearances.

And this delay is staggering. Consider that pre-GTE (Consumer Product Safety Commission v. GTE Sylvania, Inc. 447 U.S. 102 (1980)), from 1973 to 1980, some 50,000 formal FOIA requests were handled by the Commission. 85% of these inquiries were answered within the 10 working days set by the FOIA. The remaining 15% were answered within 30 working days.

In today's post-GTE backlog, as the end of February 1985, over 1,360 FOIA requests are unanswered and, of these, nearly one-half—600—involve Section 6(b) problems. Currently, an estimated 60% of FOIA requests are answered within 10 days, as required. These are the easy ones, often involving non-6(b) matters or previously 6(b)-cleansed documents. But requests involving 6(b) processing can take anywhere from several months to several years depending on the complications involved in each (e.g., if a manufacturer objects to disclosure altogether as well as to certain specific content). Significantly, the number of requests in our FOIA backlog has not changed dramatically since publication of our 6(b) rule last year, which was explicitly aimed at expediting our consideration of these requests.

These delays do not mean only a frustrated FOIA requestor who may have to wait months or years. The requestor may be a reporter who wants to inform his readership about a risk or hazard. So while the reporter waits, the American public remains in the dark. Moreover, because firms can sue the Commission to enjoin disclosure, they can effectively delay our notification of a problem to the public. As a result, our staff may yield to a firm even on the working of our own press release to avoid further, possibly life-threatening delays that may result from protracted litigation. Such compromises too frequently lead to mealy-mouthed safety messages, which may be lost on the media and the public.

Right now, before the public can be alerted, we have to share with a company information to be disclosed about that firm or its product and seek the comments of the firm. Too often, this has the practical effect of having the company pre-clear the information. If the company doesn't agree with the language in every detail, it can usually succeed in holding up release. It amounts to a form of censorship.

This practice subverts the original intent of 6(b), which was to protect firms from misleading or inaccurate publicity put out by the CPSC—not information a firm may be uncomfortable about, such as the number of infants killed from an ill-designed crib, or the number of amputations of legs and feet from a defective rototiller. 6(b) now stands for the proposition that those who have the most at stake, the

manufacturers and retailers of products, know best. Unsuspecting consumers are purportedly "protected" by permitting the parties most affected to sanitize information the Commission believes should be disseminated to the public. Proponents contend that the public is spared any upset or fallout from potentially misleading or incomplete information. Hogwash! This attitude is insulting to the good judgment and commonsense of all Americans.

Recently, a company argued that CPSC's release of materials obtained during discovery in a Section 15 administrative proceeding violated Section 6(b). A Federal court rejected the firm's contention that such materials do not fall within the statutory exceptions to 6(b) restrictions. If the decision had been otherwise, then the public would be barred from inspecting these materials, or similar materials in other cases. Surely, Congress never sought to "protect" consumers so completely that they'd be prevented from independently reviewing materials filed in a public proceeding!

CPSC is the only health or safety federal agency which must undergo egregious delays before disclosing vital safety information. We are the only agency which is so hampered in alerting the public to potential hazards. If similarly bound, NHTSA couldn't notify timely car owners about defective tires and brakes; the Department of Agriculture couldn't promptly warn shoppers about tainted meat and dairy products.

I believe that resumption of pre-GTE disclosure practices would dramatically cut delays. CPSC should not be the only federal health and safety agency which can't share vital information with those most in need of receiving it. However, if this Committee chooses to continue to have 6(b) apply to this agency, then consider some possible new conditions. Simply equire that all comments from companies concerning a FOIA-requested document be sent along by CPSC with the item sought. The Commission would not then serve as a "guarantor" of the information and could indicate this prominently on all documents. The requestor would have the means, based on information from the named firms themselves, to evaluate the credibility of any matter at issue.

### FIXED-SITE AMUSEMENT RIDES AND ATTRACTIONS

On another front, I feel compelled to state—as I have before other Congressional committees—that the loophole exempting fixed-site and "theme" amusement parks from federal oversight should be promptly closed. CPSC used to have jurisdiction over such rides. However, in 1981, intensive industry lobbying succeeded in limiting our authority to mobile rides only, leaving us powerless to deal with tragedies on most rides in large amusement parks.

In each of the last few years, an average of over 10,000 injuries has occurred on amusement rides and attractions. Since 1973, 91 deaths that the Commission knows of have shattered the merriment of the Midway—12 persons died in 1984; another 7 in 1983.

We have a patchwork of state laws governing both mobile and fixed-site amusement rides. Some 24 states don't regulate amusement rides in any way. The prevailing attitude is let the rider beware!

In the other 26 states and the District of Columbia, there's no uniform approach to improving safety. 23 require state inspectors to check rides that stay "fixed" in one site as well as those that travel from one site to another. Most are inspected for structural integrity and safety; in some states though, as long as electrical and building codes are met, the show goes on. In 3 states (California, Florida and Massachusetts), only mobile amusement rides are inspected. One other state (Texas) merely requires that ride owners and operators carry a minimum of insurance; insurance companies usually dispatch an inspector prior to issuing a policy—perhaps just once, before the fair opens for the season. And what of the amusement parks and carnivals in states without any type of regulations?

Commission jurisdiction over mobile amusement rides permits us to carry out four essential activities—

First, we act as an information clearinghouse for the States on amusement ride accidents.

Second, the law requires immediate filing of a Section 15 report if any manufacturer or owner/operator of a ride has reason to suspect that it presents a substantial product hazard.

Third, we can send investigators and engineers to the scene of a serious accident to determine the cause and avert similar tragedy on rides located throughout the country.

Fourth, we can issue a corrective action plan to require ride designers, owners and operators to make safety changes.

This is what we now do with rides that travel from site to site.

THIS IS WHAT WE SHOULD BE ABLE TO DO FOR FIXED-SITE RIDES

When a tragedy occurs—regardless whether on a mobile or fixed-site ride—a team of engineers could help identify design or structural failures and thereby avert further disaster with the same or similar ride in other locations. That's no different from what the National Transportation Safety Board does for any airline crash, or any major rail, truck, or school bus disaster.

Restoring jurisdiction would also mean that corrective action plans would apply to all rides and would provide incentives to any recalcitrant firm to develop adequate voluntary efforts. It would also promote enhanced attention to safety and to proper maintenance and inspection procedures in advance of any incident occurring.

Restoring jurisdiction would further mean that, pursuant to Section 15 of the Consumer Product Safety Act, fixed-site ride manufacturers, owners and operators would be required to notify the Commission immediately if they come across information suggesting that a ride may present a substantial product hazard—just like any other manufacturer, retailer or distributor of other consumer products, and just like the manufacturers, owners and operators of mobile rides. The fixed-site segment of this industry can only serve their own best interest, and that of the American people, by early reporting of possible hazards or defects.

This is what CPSC jurisdiction now means for some 15,000 other products, including mobile amusement rides. And the affected industries appear to have little or no problem with it. They are all playing by the same rules. And it's time to bring the entire amusement ride industry back into the picture, if we're to promote improved safety and restore the confidence of the American public in these rides.

CONCLUSION

When an emergency risk or hazard reaches severe proportions, the CPSC must act quickly and directly to eliminate or reduce it. Over the years, we have done so, effectively, when citizens were imperiled by TRIS in children's pajamas, asbestos in hairdryers, strangluations in cribs, fires from kerosene heaters, explosions from gas furnaces, and in so many comparable situations. But when injuries and deaths are steadily caused by products that don't make headlines, perhaps because the problem has not yet reached critical proportions, our action must be no less effective. In fact, the CPSC works to head off suffering before any deaths or injuries have occurred, or before any more can occur. We are not so shortsighted as to wait, nor did Congress want us to wait, for a body count to accumulate.

Unless our serious fiscal and staffing plight is corrected, the Commission will find it increasingly difficult to stay this course. Since we can't turn our backs on the hazards that demand immediate attention, time and again we find ourselves forced to stop or slow work on projects designed to prevent potential risks from ever seeing the light of day.

Compounding the problem are the strictures on disclosing information to the public imposed by Section 6(B). The law needs to be revised to permit us to release information early-on about hazards or risks to those who inquire. A safety agency should not be required to give greater emphasis to a company's concern about unfair or misleading information than to the public's right to know about product hazards.

Finally, with warm weather soon promoting a rise in ridership, it is high time to undo the special interest loophole which totally exempts fixed-site amusement rides, and the tragedies occurring on them, from any kind of federal oversight whatever.

Senator KASTEN. Mr. Statler, thank you. Our next witness will be Carol Dawson.

Ms. DAWSON. Thank you, Mr. Chairman and Senator Ford. I also have submitted a statement for the record and at this point I will highlight that statement for you.

I am pleased to be here today to testify in support of the reauthorization of the Consumer Product Safety Commission and to share my views with the subcommittee concerning our agency's past and future.

Although I am the newest member of the Commission I believe I have been part of the agency long enough to comment on its strengths and weaknesses. From my perspective I believe the CPSC is effectively carrying out its congressional mandate to protect American consumers from unreasonable risks of injury.

The Commission has operated since 1981 under what I consider prudent changes to the Consumer Product Safety Act and the Transferred Acts under our jurisdiction. In my view the Commission's role should be to use the least drastic means of intervention necessary to assure consumers a reasonable level of product safety and the 1981 amendments to the act reflect this philosophy.

Since 1981 the Commission has addressed a number of important safety issues in accordance with the letter and spirit of its congressional guidance. The manner in which these matters have been addressed can be attributed to the dedication of the Commission and its extremely capable staff.

At the same time the Commission has followed congressional direction that it reduce unnecessary regulatory burden on industry and that it defer to voluntary standards when those standards are adequate to reduce or eliminate unreasonable risk of injury.

In this regard I would like to point out that the Commission is now participating in or monitoring over 50 voluntary standards projects. To oversee this program, a career civil servant has been appointed as the voluntary standards coordinator for the Commission.

Where voluntary standards are unworkable or inadequate, the Commission must still utilize mandatory rules.

In addition, the Commission conducts safety programs designed to prevent injuries in areas not amenable to standard setting. By increasing public awareness of the dangers of childhood poisonings, smoke inhalation, home hazards to the elderly and the like, the Commission helps save lives and reduce the numbers of illnesses, deaths, and injuries on a year-round basis.

These kinds of worthwhile activities, which I support, will continue to produce beneficial results in the years ahead. Although there are many accomplishments to cite, the Commissioners realize that improvements can be made in the operation of the CPSC, and we are currently involved in efforts to implement several of them.

For instance, the Commission has recognized the value of increased cooperation with State and local governments and we plan to expand that cooperation. Accordingly, as envisioned by section 29(a) of the act, a continuing fully funded program dedicated to fostering such cooperation will be implemented in 1986. On a broader level the agency is conducting a thorough management review to eliminate wasteful overlap in program supervision.

The Commission is also studying ways to save taxpayers dollars by reducing agency overhead, such as consolidating its Washington, DC, and Bethesda offices, a move I have long supported.

In order to carry out the tasks ahead in an efficient and cost-effective manner, I respectfully suggest that Congress reauthorize the Consumer Product Safety Commission for a 3-year period. Not only would this facilitate long range planning for the agency and promote stability among personnel, it would also reassure the public that the work of this agency will not be disrupted. Shorter

reauthorization periods tend to shift agency attention away from the tasks at hand.

Beyond a 3-year extension of the Commission, there is one area where the present law, I believe, can be improved. I would urge the subcommittee to consider ways to amend the conflict of interest provisions that govern our selection of members of the chronic hazard advisory panels. The current law sometimes unintentionally keeps us from obtaining the assistance of many topnotch unbiased scientists to serve on these panels, which as you know must be convened prior to adoption of regulations in the area of chronic hazards. A carefully drawn amendment to the act governing selection of these panelists could expedite their selection process and help assure that the Commission receives the best scientific advice available.

Since our last reauthorization in 1981 I think the Commission has achieved a great deal, but as I have suggested there is still more the Commission can do in order to inform the public about risks from consumer products and to remove unreasonably dangerous products from the marketplace. A 3-year reauthorization will enable us to perform these essential tasks.

Mr. Chairman, I thank you for giving me this opportunity to testify before the subcommittee. I welcome your continued interest in the safety of our Nation's citizens and I look forward to working with you as the reauthorization process moves forward.

[The statement follows:]

STATEMENT OF CAROL G. DAWSON, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Thank you, Mr. Chairman, I am pleased to be here today to testify in support of the reauthorization of the Consumer Product Safety Commission and to share my views with the Subcommittee concerning our agency's past and future.

Although I am the newest member of the Commission, I believe I have been a part of the agency long enough to comment on its strengths and weaknesses. From my perspective, I believe the CPSC is effectively carrying out its Congressional mandate to protect American consumers from unreasonable risks of injury.

The Commission has operated since 1981 under what I consider prudent changes to the Consumer Product Safety Act and the transferred Acts under our jurisdiction. In my view, the Commission's role should be to use the least drastic means of intervention necessary to assure consumers a reasonable level of product safety, and the 1981 amendments to the Act reflect this philosophy. In 1983, I think both houses of Congress correctly realized the wisdom of the 1981 amendments, when similar and simple reauthorization bills, preserving those revisions, were passed overwhelmingly. I would urge that Congress follow the same path this year.

Since 1981, the Commission has addressed a number of important safety issues in accordance with the letter and spirit of its Congressional guidance. The manner in which these matters have been addressed can be attributed to the dedication of the Commission and its extremely capable staff.

For instance, the Commission recently adopted a well thought-out plan to address the hazards presented by all-terrain vehicles, a relatively new product with a high rate of injury. The Commission has successfully worked with the chain saw industry to develop an effective voluntary standard which addresses the risk of injury from chain saw kickback. It voted to revoke a mandatory standard on unvented gas space heaters due to the success of an industry-wide standard which adequately addressed the risk of injury from carbon monoxide poisoning. It also worked out a corrective action plan with a manufacturer of gas valves which presented an explosion hazard and obtained a civil penalty settlement with that manufacturer which is the largest in the agency's history.

At the same time, the Commission has followed express Congressional direction that it reduce unnecessary regulatory burden on industry and that it defer to voluntary standards when those standards are adequate to reduce or eliminate unreason-

able risk of injury. In this regard, I would like to point out that the Commission is now participating in or monitoring over 50 voluntary standards projects. To oversee this ambitious program, a career civil servant has been appointed as the voluntary standards coordinator for the commission. Where voluntary standards are unworkable or inadequate, the Commission must still utilize mandatory rules.

The Consumer Product Safety Commission has by no means completed its mission, however. A number of issues must yet be addressed. Thus, for fiscal year 1986, the Commission has identified five major areas of consumer safety that need further intense activity, among them electrocution hazards, portable electric heaters, riding mower stability, and gas heating systems.

In addition, the Commission conducts safety programs designed to prevent injuries in areas not amenable to standard-setting. By increasing public awareness of the dangers of childhood poisonings, smoke inhalation, home hazards to the elderly, and the like, the CPSA helps save lives and reduce the numbers of illnesses, deaths, and injuries on a year-round basis. These kinds of worthwhile activities, which I support, will continue to produce beneficial results in the years ahead.

Although there are many accomplishments to cite, the Commissioners realize that improvements can be made in the operation of the CPSC, and we are currently involved in efforts to implement several of them. For instance, the Commission has recognized the value of increased cooperation with state and local governments, and we plan to expand that cooperation. Accordingly, as envisioned by Section 29(a) of the CPSC, a continuing fully-funded program dedicated to fostering such cooperation will be implemented in 1986. In the next fiscal year the Commission will also institute a pilot program, which I proposed, of surveillance of consumer goods at the import level, so that dangerous products can be stopped before they enter the stream of commerce. This program will require close cooperation with units of government at various levels. Finally, we will be seeking assistance from state and local agencies to help assure that pharmacies supply child-proof closures with prescription medicines, in compliance with the Poison Prevention Packaging Act, to prevent the tragedy of childhood poisonings. Such cooperation stretches scarce resources and at the same time encourages wider support for our efforts.

On a broader level, the agency is conducting a thorough management review to eliminate wasteful overlap in program supervision. The Commission is also studying ways to save taxpayers' dollars by reducing agency overhead, such as consolidating its Washington, D.C. and Bethesda offices, a move I have long supported.

In order to carry out the tasks ahead in an efficient and cost-effective manner, I respectfully suggest that Congress reauthorize the Consumer Product Safety Commission for a three-year period. Not only would this facilitate long-range planning for the agency and promote stability among agency personnel, it would also reassure the public that the work of this agency will not be disrupted. Shorter reauthorization periods tend to shift agency attention away from the tasks at hand.

Beyond a three-year extension of the Commission, there is one area where the present law can be improved. I urge the Subcommittee to consider ways to amend the conflict of interest provisions that govern our selection of members for Chronic Hazard Advisory Panels. Perhaps unintentionally, the current law sometimes keeps us from obtaining the assistance of many top-notch and unbiased scientists to serve on these panels, which as you know must be convened prior to adoption of regulations in the area of chronic hazards. A carefully-drawn amendment to CPSA governing selection of CHPA panelists could expedite the selection process and help assure that the Commission receives the best scientific advice available.

Mr. Chairman, it is my belief this agency has come a long way in its 12 years of operation. Regulated industry, consumers, and health and safety officials know about the work of the CPSC, and I believe they support its continued existence.

Since our last reauthorization in 1981, I think the Commission has achieved a great deal, but as I have suggested, there is still more that the Commission can do in order to inform the public about risks from consumer products and to remove unreasonably dangerous consumer products from the marketplace. A three-year reauthorization will enable us to perform these essential tasks.

Thank you, Mr. Chairman, for giving me this opportunity to testify before the Subcommittee. I welcome your continued interest in the safety of our nation's citizens, and I look forward to working with you and your staff as the reauthorization process moves forward.

Senator KASTEN. Thank you. We look forward to working with you.

Mr. Chairman, it appears that the CPSC has developed a balanced and a cost effective approach to achieving the goal of product

safety. However, we have heard testimony indicating that vital projects have been dropped to make resources available to deal with the ATV, all terrain vehicle question.

Is more money than the $33.7 million requested by the agency needed for 1986?

Mr. SCANLON. I don't think so, Mr. Chairman. We have selected five priority projects for fiscal year 1986. Those will remain intact. There will be no dimunition of our research or staff time allocated to the five.

There will be some other projects that will have to be put on hold but that would be routine. I think that any time there is an emerging hazard, such as ATV's, we have a responsibility to put things aside that can be put aside and then we should look at what is really important.

Senator KASTEN. I have a series of questions and if there is any time, Carol and Stuart, in which you want to make a statement or you agree, disagree, want to amend, add, whatever, somehow signal and I want to give you all a chance to speak to these three or four different questions.

Do either of you have a comment on that question on the all terrain vehicle?

Mr. STATLER. If I may, at the risk of a silence seeming to connote acquiescence to the last response——

Senator KASTEN. I am not trying to encourage controversy here. I am trying to give everybody a chance to participate.

Mr. STATLER. The fact of the matter is, back when we prepared our fiscal year 1986 budget, the commissioners sat down for days on end and worked out a budget of $37.3 million dollars for fiscal year 1986. That took a lot of back and forth negotiating, compromise and consensus.

And what that represented was our current 1985 budget figure of $36 million with a factor for inflation built in. But, it was all targeted to specific products and projects.

Then OMB came back to us and said we don't want you to have $37 million, we want you to have $28 million and we want to cut your staff down to something like 450, 460. Partially a result of the publicity that was occasioned by that and as a result of Terry coming into the chairmanship and arguing with OMB for a higher amount, a compromise, so to speak, was settled upon of $33.7.

What that was meant to reflect was a freeze, less a 5 percent Federal paycut. Now, Mr. Chairman, you may know a lot more about what the Congress is going to do over the next couple of weeks and months in terms of a Federal paycut but from everything I read it probably isn't going to take place.

So, we are now stuck with a budget of $33.7 million, and a staffing cut of 19 people from last year. Yet, the best judgment of all the Commissioners was that at a minimum, recognizing the national deficit and the problems we had, we should freeze and provide for inflation. But even a freeze would grant us $36 million for next year, not the $33.7 million that OMB has now asked us to take on and support.

Senator KASTEN. You should be happy you are not the Small Business Administration.

Over the past few years, court decisions have held that section 20 of the Consumer Product Safety Act does not give the agency authority to assess civil penalties in administrative proceedings and that the Commission must institute penalty actions in Federal court.

Have these rulings limited the agencies deterrent capability and enforcement authority?

Mr. SCANLON. I am going to let our general counsel answer that, if I may.

Mr. LEVINSON. Mr. Chairman, at this point I don't think it has. Looking at the last 2 years, the court decision, Athlone, which ruled that the Commission would have to seek such penalties in court rather than assess them administratively, does not appear to have affected our operations, at least during this most recent 2-year period.

I think it might be worthwhile, keeping a close eye on this issue to see how it might affect our future activities but most recently I think the settlement with Honeywell is a good demonstration of the Commission's authority, its ability to act even with the state of the law as it is now.

Mr. STATLER. Mr. Chairman, I think the impact is less on the Commission and more on those manufacturers and retailers with whom we deal. I don't think it has negatively impacted on us all that very much. But, it does seems to me to be inconsistent with the urging of Congress to try and work things out with companies because where we could bring an administrative action, we had far more control over the development of that action.

But now we have to go immediately into the courts. The litigation and adversarial nature that comes to pass as a result of that, I think, cuts against the trend toward volunteerism and working with these companies. And, I don't think that that trend was intended by either the courts that ruled that we don't have the authority or by Congress that acquiesced.

Senator KASTEN. Mr. Chairman, some criticism has been expressed and it was expressed this morning by Mr. Statler of the limitations imposed on the agency by section 6(b) of the Consumer Product Safety Act, particularly with respect to the handling of Freedom of Information Act requests.

In your opinion, has the agency effectively resolved this problem?

Mr. SCANLON. We haven't resolved the problem, Mr. Chairman, but I support section 6(b). I think the 1981 amendments including this section 6(b) question were good. I don't think it is too high a price to pay for accuracy, fairness, and due process.

The staff time and the dollars necessary to carry out section 6(b), I think, are good government policy. I would like to point one thing out. Section 6(b) presents no disclosure problems when administrative or judicial action is warranted so the public is not hurt by section 6(b).

Senator KASTEN. I would like you to respond to Senator Simon's proposal to expand the jurisdiction of the CPSC to cover rides at fixed site amusement parks. Does the agency have the resources? Does the agency have the expertise required? Would this responsi-

bility detract from the agency's ability to regulate in other areas? What is your position, Mr. Chairman?

Mr. SCANLON. My answer is yes to the last of those questions. If the Congress were to reregulate, to go back to pre-1981 and give the CPSC jurisdiction over fixed site rides, I think what we would be doing would be reactive.

We do, and I must be honest with you, minimal work on the mobile rides. We are talking about a very costly program if we are to do, if we are to send engineers out to several States to do, inspections. Currently 75 percent of all fixed site rides are inspected by State or local authorities. Three largely populated States, Ohio, Illinois, and Pennsylvania enacted legislation last summer that will call for inspections.

What we are really talking about is approximately one hospital treated accident per every 8 million riders on amusement rides. I just don't think it would be cost effective for us.

Another problem I foresee is that if the States—many of whom at present are doing a good job on this—think the Feds are also out there doing these inspections, and in most cases we wouldn't be doing it prior to an accident, I am afraid they would do less and this would be unhealthy. I really think this is a matter best left to State and local governments.

Senator KASTEN. Mr. Statler, you addressed this question in your opening remarks. Do you have something to add?

Mr. STATLER. Yes, I think the issue is clouded when we refer to the jurisdiction of the Commission. To mean only sending out inspectors. I would be entirely happy if this Congress were to give us the jurisdiction and in line with that say: "We don't want you sending inspectors to inspect rides across the country before anything occurs."

The key is the ability to investigate an incident soon after it occurs. For example, while an incident occurs in Texas, that same ride may well be in Wisconsin. If we can't investigate that incident, we can't prevent a recurrence of that tragedy whether it occurs in Wisconsin, Ohio, California, or anywhere else around the country.

The other key is where remedial action is needed—whether it be in Texas, Ohio, Wisconsin, or any place else—to be able to tell those manufacturers and those owner/operators that you must do the remedial action, just as we do under section 15 of our act with respect to every other consumer product, including mobile amusement rides.

But if we don't have the jurisdiction, as we now don't, and something occurs, as it did in Texas with the Enterprise ride, one of the most popular in the country and appeared in 20 other places in the country. We would not be able to tell those owner/operators in other States to correct it. And we couldn't in the case of the fixed rides. We were able to in the case of the mobile rides. That seems to me senseless.

Finally, we are not only talking about recurrence of tragedy, we are talking about preventing it in the first place. And not by inspections before the ride gets going in the spring or in the summer, but by putting the burden on the manufacturers and the owner/operators themselves to report to us when their own investigations, when their own inspections, when the insurance adjustor comes in

and inspects or when the State official comes in and inspects, to report to us when a substantial hazard is suspected. When this is done, we can then notify other owner/operators and other manufacturers around the country where that same type of ride may be in place.

Mr. SCANLON. If I could make one comment, I think it is interesting to note that accidents on both mobile and fixed amusement rides and attractions have declined 24 percent from 1982 through 1984.

Senator KASTEN. I don't want to get into a debate here back and forth but why don't you give us these facts.

Mr. SCANLON. We will be happy to.

Senator KASTEN. Mr. Statler is going to grab the microphone and we are going to go back and forth. This is an issue, we have a couple of other witnesses appearing later today on this question. It is something we are going to have to address, but I appreciate everyone having the opportunity to give their opinions.

There are a number of other questions that we have, most of which are of a technical nature that we will submit to you for the record. It is my understanding that some of the other Senators on the committee have questions also. We will submit those questions to you. Hopefully you can get back to us in an appropriate time with the answers to those questions.

Mr. SCANLON. We would be happy to provide a quick response.

Senator KASTEN. Thank you all very much for your testimony this morning.

[The following information was subsequently received for the record:]

STATEMENT OF SAUNDRA BROWN ARMSTRONG, VICE CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman and Members of the Subcommittee.

I would like to thank you for this opportunity to present my views concerning the reauthorization of the Consumer Product Safety Commission. I believe that this agency performs many vital functions which serve the best interest of American consumers and that it should continue to exist for a number of reasons, some of which I will briefly summarize.

The Commission was established in 1973 to address unreasonable risks of injury associated with consumer products. Congress enacted the Consumer Product Safety Act, in part, from an awareness of the increasing complexity of and rapid change in consumer products and the resulting inability of consumers to "anticipate risks and to safeguard themselves adequately" (section 2(a)(2) of the CPSA). The increasing pace of technological change and scientific development has not slackened in the intervening years.

Also unchanged since its founding is the Commission's unique status as the only institution that brings a national perspective to the issue of consumer product safety. This singularity has enabled the Commission to use any of a number of strategies to effectively "target" safety problems and issues as well as specific hazardous products with the least-intrusive remedial action necessary to eliminate or to adequately reduce the risk of injury or death. One writer, in my opinion, appropriately characterized the work of the Commission as "national preventive medicine," designed to avoid needless death and injury and the terrible drain on our national financial resources caused by product-related deaths and injuries (*e.g.*, lost wages; costs of hospital care; costs of long-term care for those permanently disabled; costs to companies of product liability cases, where those funds could be spent on product development, research, and capital expansion).

When examined in this context, the benefits derived from the efforts of the Commission (past, present and future) clearly exceed its total cost to American taxpayers. In 1983, the Consumer Federation of America estimated that in the 12 years of

the Commission's existence, there have been 5 million fewer deaths and disabling injuries in household accidents and a total economic savings of over $14.4 billion. Similarly, the Roper Poll released in August 1984, showed that the Commission was one of the most highly regarded Federal agencies covered by the survey. While overall, Federal agencies received a 60% favorable rating in 1984, the American public gave the Commission a positive rating of 78%, which represents an increase of 10% in the 1983 rating reported by Roper.

Through prudent application of our statutory tools and options, the earnest pursuit of cooperative and voluntary solutions (wherever such approaches are feasible and adequate to protect consumers), and the relentless efforts of our dedicated staff, we have made significant progress with respect to the safety of consumer products. Our plans for Fiscal Years 1985 and 1986 reflect several Commission initiatives which demonstrate a continuing commitment to achieve our mandated goals and responsibilities.

### CONTINUING EMPHASIS ON VOLUNTARY AND COOPERATIVE EFFORTS

In accomplishing the objectives of our priority projects and on-going hazard programs, we have in the past, and will continue to work closely with industry and consumer groups, state and local governments, the voluntary standards community, and other Federal agencies. Through voluntary and cooperative efforts, we can leverage our capabilities and resources to achieve a potentially greater positive impact in resolving consumer safety problems and issues; and we can mitigate any adverse economic effects on business and consumers.

Since its inception, the Commission has participated with private sector organizations in over 130 voluntary efforts. These projects have resulted in the publication of about 75 new voluntary standards and upgraded revisions of about 25 others. The scope of the Commission's commitment to voluntary standards is clear when we realize that during the Agency's 12-year history, only 35 mandatory standards or banning rules have been issued. In the current fiscal year, the Commission has allocated 48.5% of its hazard program resources (which includes both staff salaries and contract dollars) to the support of voluntary efforts. For Fiscal Year 1986, the Commission will meet or exceed the FY 1985 allocation.

I personally believe that mandatory and voluntary standards serve important purposes. Both tools are, in my estimation, indispensable to effectuation of our Congressional mandate of protecting the public against unreasonable risks of injury associated with consumer products. I perceive the voluntary standards process as positive because its essence is the cooperative association of different groups, effectively coping with a diversity of interests and harmonizing them to produce a product safety standard of benefit to the industry, the government, and the consumer.

In the next fiscal year we will continue and, in some cases, broaden voluntary activities and approaches which have been demonstrably effective in past fiscal years. Some positive indicators of the success of these efforts are:

Expanded dialogue and more joint activities with voluntary standards-setting organizations and trade associations to address consumer safety issues; and

Appointment of a full-time voluntary standards coordinator.

In the current fiscal year, the Commission and the staff conducted and participated in numerous meetings with major industry and consumer groups to discuss consumer safety issues ranging from chain saws to first aid labeling to all terrain vehicles. In addition, joint conferences with industry will be conducted in the coming months focusing on pool and spa safety and drowning prevention and on safety for older consumers.

We plan to continue this thrust. In Fiscal Year 1986, we will present regional seminars for manufacturers, retailers, and distributors on Section 15 reporting requirements. We will also continue to play an active role in the voluntary standards process by participating in or monitoring industry committee work in developing or revising safety standards where we believe an unreasonable product hazard exists.

As I indicated previously, the use of cooperative approaches is continually emphasized as most desirable wherever such alternatives are feasible in discharging our statutory compliance and enforcement responsibilities. For example, a total of $250 thousand ($150 thousand more than in FY 1985) has been allocated to fund a larger number of agreements with state and local health and safety agencies (e.g., fire departments, health departments, consumer protection/affairs agencies, and coroners) and to acquire additional support and assistance through the network of Cooperative Extension Service agencies. These agreements will support an expanded five-point program which will be administered by the Directorate of Field Operations. The program is intended to augment the Commission's capability in the areas of:

Source development and investigation;
Enforcement of certain mandatory standards (toys, children's products, refuse bins, fireworks, architectural glazing, household chemicals, and certain regulations under the Flammable Fabrics Act);
Monitoring industry conformance with certain voluntary standards (upholstered furniture, garage door openers, electric blankets, and unvented gas space heaters);
Outreach and dissemination of product safety information; and
Import surveillance.

INCREASED CAPACITY FOR IDENTIFICATION OF EMERGING HAZARDS AND PRODUCT ASSESSMENT

Significant corollaries to our greater emphasis on voluntary and cooperative efforts are:
We are given access to more sources of product incident data, to information about potentially hazardous products, and to information about violations of mandatory and voluntary standards; and
We have more non-Federal intermediaries who can serve as conduits in providing information to consumers and who can interact with and assist them directly.
Thus, our increased cooperation with public and private sector organizations at the state and local level in FY 1986 will substantially broaden our capabilities in identifying emerging hazards; in providing timely notification to the public, manufacturers, distributors, and retailers concerning hazardous products; and in conducting routine investigations as well as special research.
The Commission's ability to respond quickly and comprehensively is demonstrated by our recent action with respect to the emergence of all terrain vehicles (ATVs) as a potential hazard to the safety of the American consumer. According to Commission data, in the period 1982 to 1984, there have been at least 125 deaths (with the 1984 figures still incomplete) and over 100,000 emergency room-treated injuries associated with ATVs. By the end of 1985, we estimate that 2.5 million ATVs will be in use.
In response to this emerging hazard, the Commission unanimously approved a program designed to collect and develop information in order to determine what (if any) actions are necessary to address the risk(s) of injury posed by ATVs; to disseminate safety-related information to the public; and to encourage both private and public sector activities, such as the development of an adequate voluntary safety standard with mechanisms for assurance of substantial industry compliance. The program begins in the current fiscal year and continues into at least FY 1986. In my opinion, this approach serves to highlight the seriousness of the ATV situation and the Commission's determination and ability to take action to address any identified unreasonable risk of injury.

SAFETY FOR OLDER CONSUMERS: A MODEL OF COOPERATION

I mention the Commission's "Safety for Older Consumers" priority project because, in my opinion, it cogently demonstrates the benefits as well as the economies that can be derived from cooperative efforts.
While the safety of the elderly is an on-going consideration of the Commission, the particular vulnerability of older persons to injury or death caused by accidents in the home is a source of growing national concern. This year an unprecedented number of Americans—a total of 28 million—will be age 65 or over. The United States Census Bureau predicts that the growth trend we are witnessing in our Nation's elderly population will continue through the middle of the next century. As the post-World War II cohort ages, the number of injuries and deaths due to accidents in the home could rise dramatically.
Out of concern for the personal devastation to the elderly caused by home-related accidents, and the attendant implication that such injuries will demand an even greater share of our Nation's health care resources as the size of our elderly population increases, the Commission established "Safety for Older Consumers" as a priority project in Fiscal Years 1984 and 1985 to increase awareness of this major public health concern.
This Commission priority project is mainly intended to serve as a catalyst for on-going public and private sector initiatives to prevent accidential injuries and deaths among the elderly. In the coming months, we will be working with national, state, and local organizations to disseminate a Home Safety Checklist (developed under the auspices of the "Safety for Older Consumers" priority project) as widely as possible and to conduct public awareness activities.

Already, 32 states and the District of Columbia, eight cities, and nine county and regional agencies have indicated their support for the project and informed us of plans to conduct programs and activities related to "Safety for Older Consumers" within their jurisdictions.

In addition, we have cooperative efforts underway with over 30 national organizations and several corporations to distribute the Home Safety Checklist.[1] I recently met with representatives of two trade associations which represent major gas and electric utility companies in the country to explore the possibility of collaborative efforts. Both trade associations were favorably disposed toward incorporating the "Safety for Older Consumers" information into their existing programs and activities, and we are looking forward to receiving specific information from them over the coming months concerning these activities. Further, Southwestern Bell Publishing Company will incorporate excerpts of the Home Safety Checklist into the new "Silver Pages" to be published in telephone directories nationwide. Southwestern Bell estimates that the abridged Checklist will reach over 11 million older Americans through the "Silver Pages."

The "Safety for Older Consumers" project is also being significantly advanced through interagency relationships which have been established with the Departments of Health and Human Services, Housing and Urban Development, and the Treasury; the United States Office of Consumer Affairs; and the Veterans Administration. The Department of Agriculture has also expressed support for the project.

There are several significant factors underlying the success and effectiveness of this consumer safety initiative. The most obvious of these is that the project addresses a growing public health concern. A second key factor is that in promoting the project, we succeeded in tapping and receiving almost unanimous support from a vast network of agencies which are the principal service providers for the target population. Finally, the pilot test and the evaluation confirmed that the project is highly replicable and that it can be easily integrated into existing service delivery programs for the elderly with a minimal investment of resources.

In summary, the "Safety for Older Consumers" priority project provides a successful demonstration of what can be achieved with relatively modest resources and through the strategic and persistent application of numerous and diverse cooperative approaches (in this case, "peers helping peers"; Federal, state and local cooperation; joint public and private sector initiatives; and collaboration among Federal government agencies) to achieve mutual and compatible consumer product safety goals.

### IMPROVED ORGANIZATIONAL ENVIRONMENT AND BETTER USE OF RESOURCES

At my initiative, the Commission will conduct a comprehensive management analysis over the next few months. With a team of management experts, we will conduct an intensive review and analysis of our organizational structure, management systems, and operations to determine how we can deploy our resources more effectively and efficiently while fulfilling our statutory mandate and responsibilities.

We expect the analysis to result in a number of improvements which should significantly facilitate the agency's future operations by streamlining our resource applications and requirements.

Among other things, the management analysis will include:

a detailed review of the current matrix management system;

an analysis of the agency's long-term research activities, their actual and projected costs, and the benefits and results which are likely to be derived from them in light of our mandated objectives and functions and our austere fiscal condition; and

a review of the field structure, operations, and staffing as well as the productivity of this contingent in view of the accountability framework within which it operates.

### CONCLUSION

Admittedly, it is a challenge to effectively and consistently implement the intent of Congress through programs and operations which must continue to exist in a more rigorously managed organizational environment and with leaner resources. Nevertheless, the Commission continues to perform as a regulator, standardbearer, arbiter, sentry, and enforcer in the American marketplace. For this reason, I believe that this commission can continue to effectively address safety problems and issues and meet the major consumer product safety needs of this Nation.

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[1] See Attachment.

I wish to conclude by expressing, in this context, my continuing commitment to the fulfillment of all directives given to this Commission by Congress. And, it is with this intention that I respectfully encourage the Subcommittee to reauthorize the Consumer Product Safety Commission.

ATTACHMENT TO REAUTHORIZATION TESTIMONY OF VICE CHAIRMAN SAUNDRA BROWN ARMSTRONG

SAFETY FOR OLDER CONSUMERS

*A. States, cities, counties and regional organizations which are supporting and/or implementing the program.*

*States (33)*

1. Pennsylvania
2. California
*3. Louisiana
*4. Connecticut
*5. New Hampshire
*6. Rhode Island
*7. Idaho
*8. Wyoming
*9. Indiana
*10. Michigan
*11. Nebraska
*12. Illinois
*13. Wisconsin
*14. Iowa
*15. North Dakota
*16. South Dakota
*17. Minnesota
*18. Ohio
*19. Georgia
20. Alabama
21. South Carolina
22. Florida
23. West Virginia
24. Tennessee
25. Virginia
26. Arkansas
27. New Mexico
28. Texas
29. Oklahoma
30. Washington
31. Oregon
32. Hawaii
33. District of Columbia

*Cities (8)*

*1. Philadelphia, PA
*2. Allentown, PA
*3. Baltimore, MD
*4. Albuquerque, NM
*5. Bakersfield, CA
*6. Birmingham, AL
7. Houston, TX
8. Los Angeles, CA

*County/Regional (9)*

1. Morris County, NJ
*2. Burlington, County, NJ
*3. Clackamas County, OR
*4. Tacoma/Pierce County, WA
*5. Broward County, FL
*6. Blue Grass Area Agency on Aging
*7. North Central Texas Area Agency on Aging
*8. Denver Area Agency on Aging
*9. Oklahoma City Areawide Aging Agency.

*Denotes those which have been awarded purchase orders from CPSC.

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QUESTIONS OF THE COMMITTEE AND THE ANSWERS

*Question.* The Cigarette Safety Act requires the CPSC to function as the lead agency in an effort to determine the feasibility of developing a cigarette that will not ignite upholstered furniture. Does the CPSC have adequate funds to carry out the mandate of the Cigarette Safety Act?

Answer. The Interagency Committee (IAC) approved a budget of $2.7 million in February 1985 for a 30-month operating plan. Since that time, the Committee has been working with the Office of Management and Budget (OMB) to obtain funding. OMB recently advised Chairman Scanlon that it will make $500,000 available from existing resources for Cigarette Safety activities for the remainder of FY 1985 which should cover all necessary expenses for this year. If the Committee can obtain $1.5 million in funding in the same manner for FY 1986, it will have adequate funds to carry out its mandate.

The CPSC approved $150,000 in FY for research contract activities under the Act. The Technical Study Group has earmarked $130,000 of these monies to develop experimental cigarette models.

During the period from January to April, 1985, the Technical Study Group of the IAC has met four times to carry out its duties under the Act.

*Question.* Section 861 of the CPSA Reauthorization Bill reported by this Committee in the 98th Congress and passed by the Senate, contained a provision that allowed the CPSC to disclose information about product hazards to CPSC contractors when necessary in connection with contractorial work the contractors were performing for the CPSC. It also contained a provision that relaxed the conflict of interest criteria for members of the CPSC Advisory Panels (CHAPs). Are these reforms still appropriate?

Answer. The first reform would have replaced the words "or employees" in Section 6(a)(8) of the CPSA with "employees or representatives of the Commission including contractors." The Commission construes the current statutory language to permit the sharing of product hazard information with its contractors, subject to restrictions that prevent the contractors from disclosing the information without authorization by the Commission. Accordingly, the Commission believes the reform provision, while consistent with our legislative program, is unnecessary.

The second reform would have amended Section 28(b)(1) of the CPSA by adding the words "that may be the subject of the panel's investigation" after the word "product." This reform is highly desirable for the effective functioning of Chronic Hazard Advisory Panels. The Commission has often found it necessary to disqualify otherwise highly qualified nominees for these panels because they were employed by, or consulted for, firms that made or marketed consumer products totally unrelated to the subject matter of the panels.

*Question.* In his testimony at the CPSC Agency hearing, Mark Silbergeld of Consumers Union expressed concern about § 6(b) limitations imposed on Freedom of Information Act requests. He made specific reference to two requests for Agency records (request No. S 210186 and request No. S 211027), by Consumer Reports, and expressed the view that § 6(b) prevented timely and full disclosure of information requested. Please comment and explain in detail why the Agency's response to these requests was delayed and why the information requested was not provided in full?

Answer. Both Freedom of Information Act (FOIA) request S 210186 and S 211027 involved file searches for records not often requested, record calls from other agency components, consultation by the Commission's Office of the Secretary, Freedom of Information Division (FOI) staff with Mr. Mark Silbergeld, preparation and duplication of much material for disclosure, drafting and approval of letters to Mr. Silbergeld explaining why some documents were withheld and transmitting the documents disclosed.

During the period we were processing Mr. Silbergeld's requests (October, 1982 through March, 1983), we received 3,471 FOIA requests and completed 3,537 FOIA requests. (The Clearinghouse processed a similar number of requests.) At the time, the Commission's OS/FOI staff consisted of 4 full-time professionals, 1 secretary, and 2 part-time law students.

The Commission attempts to process all FOIA requests in order of receipt on a "first-in, first-out" basis. Requests seeking "popular" records that have been previously cleared, requests where no responsive records are located, and requests that seek records already being processed in response to other requests may be expedited. Complicated requests, such as S 210186 and S 211027, which require extensive file searches in many agency offices in addition to section 6(b) processing are assigned in order of receipt.

Case details on the two referenced requests follow:

REQUEST S 210186

On October 21, 1982, the Commission's Office of the Secretary, Freedom of Information Division (OS/FOI) received FOIA request S 210186 from Mr. Mark Silbergeld of Consumers Union. This request sought: (1) a petition concerning drain cleaners containing sulfuric acid; (2) all records pertaining to the disposition of that petition; and (3) all National Electronic Injury Surveillance System (NEISS) data related to injuries involving acid, drain cleaners, and drain cleaners containing sulfuric acid.

Within a week of receiving this request, we acknowledged receipt and sent a copy of the request to the Directorate for Epidemiology, National Injury Information Clearinghouse, asking that it provide the NEISS data requested to us. (The material responsive to items (1) and (2) of Consumers Union's request was more easily accessible as it is filed in the Office of the Secretary.)

In December, 1982, the Commission received the NEISS data from the Clearinghouse. The request was assigned to a Freedom of Information Specialist for final processing. The NEISS data consisted of computer printouts summarizing investiga-

tion reports, reported incidents, and death certificates. The printouts apparently identified manufacturers by name, thereby requiring processing under section 6(b)(1) of the Consumer Product Safety Act (CPSA).

In January, we telephoned Mr. Silbergeld to explain that the NEISS material required CPSA section 6(b) processing. Mr. Silbergeld then agreed to receive the printouts excised of manufacturers' identities to expedite the request. We transmitted this material to Mr. Silbergeld on February 10, 1983, and notified him that a request for the manufacturers' identities would be processed in accordance with the CPSA.

REQUEST S 211027

On November 11, 1982, the Commission's Office of the Secretary, Freedom of Information Division, received FOIA request S 211027, from Mr. Mark Silbergeld of Consumers Union. The records sought in this request involving kerosene heaters included briefing materials, petitions and comments pertaining to their disposition, specific studies and methodologies, epidemiologic analyses, and the basis of a staff briefing before the Commission.

Within the week, the FOI Officer acknowledged receipt and forwarded relevant parts of the request to the Directorate for Health Sciences and the Office of Program Management. Some responsive records normally maintained had been retired to the Federal Records Center in Washinton, D.C. Accordingly, a search of the Federal Records Center was required.

During Janaury, 1983, the Directorate for Health Sciences responded by providing records and requested that certain draft staff studies be withheld. This directorate provided suggested responses to inquiries. The Office of Program Management had no responsive records. Request No. S 211027 was then assigned to an FOI Specialist to determine which documents could be disseminated.

On March 15, 1983, we responded to each aspect of the request, with the exception of the retired documents. These retired records were subsequently provided on April 12, 1983. An internal staff working paper was withheld pursuant to Exemption 5 of the Freedom of Informatin Act, 5 U.S.C. § 552(b)(5), and manufacturers' identities were excised from another document to expedite the disclosure. Mr. Silbergeld was informed of the excisions and was again informed of his right to request section 6(b) processing to obtain these identities.

Senator KASTEN. Our next witness is Bernard H. Falk, who is the president of the National Electrical Manufacturers Association.

Mr. Falk, we are pleased to have you with us this morning.

## STATEMENT OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Mr. FALK. Thank you, Mr. Chairman and good morning. I am here today to voice our support for the reauthorization of the Consumer Product Safety Commission.

Our association, NEMA, National Electrical Manufacturers Association, represents an industry with a history of prime concern for safety. Since the first electrical products were installed 100 years ago, manufacturers have worked closely with sellers, installers, inspectors, and Government, producing a distinguished safety record through voluntary standards and codes. And we regard the Consumer Product Safety Commission as a partner in these efforts.

Our relationship with the Commission has always been at the same time cautious and cooperative. Cautious because, after all, the CPSC is a regulatory agency with powers to affect the design, manufacture, and distribution of electrical products. Yet cooperative because, even when we do not agree on the appropriate methods, we share a common commitment to the safety of electrical products.

Thus, our relationship can be adversarial on the one hand, battling the Commission over a proposed rule or procedure, while

NEMA members and Commission staff are meeting to discuss technical solutions to other problems. Our technical resources and knowledge of the industry and its products have always been at the Commission's disposal, in which what we believe to be the only sound way to regulate through cooperation.

Where we have differed from the Commission in recent years has been largely on procedural matters. Because of the Commission's special stature and public image as a defender of the consumer, its pronouncements carry weight in the media and with the public. This imposes a special responsibility on the agency to ensure that its disclosures are accurate and fair.

I testified in 1981 and 1983 on the Commission procedures on information disclosure. In the last 2 years, regulations have been put in place and NEMA, along with other industries, affected by Commission actions, are gaining useful experience in working with them.

Let me comment briefly on several of the Commission's ventures of the last 2 years, to illustrate why I believe we have the proper Government-industry balance. I was told on the radio this morning at about 8:45 on station 630, it was announced that today is the first day of the Second Annual Electrical Safety Awareness Month, a repeat performance of an especially successful outreach effort by the Commission and industry. To get things started last year, NEMA and other industry organizations helped write an electrical home safety audit checklist, and we put up the funds to print half a million of them for Commission distribution. Even the signature emblem with its message—electricity: handle with care—was designed and produced by NEMA and given to the Commission for its unrestricted use.

Another recent issue on which we have shared technical data and information on standards concerns certain new electronic controls for consumer products. Last summer the Commission convened a group of organizations, ours included, to discuss the safety aspects of microcircuitry in consumer products. There was no proposed rule, no pending product action, just an exchange of information to help all parties understand some important advances in technology and how those changes might affect product safety.

In other areas we have taken issue with Commission proposals in the last couple of years. As a major developer of voluntary standards, our association was concerned about a proposal to establish a formal system for recognizing such standards. It is not that we oppose Government use of voluntary standards, quite the contrary, but we sincerely feel that the Commission has at its disposal the means to promote voluntary standards in a number of ways, without establishing a systematic and relatively inflexible approach. While the Commissioners voted down the earlier proposal, discussions continued on the role of voluntary standards in consumer safety regulation and we expect to be participating.

We also look forward with substantial interest to Commission deliberation of an April 6, 1984, Statement of Enforcement Policy on Substantial Product Hazard Reports. Industry is subject to section 15(b) of the Consumer Product Safety Act which sets forth conditions under which manufacturers must report information indicating potential product hazards.

We believe that this enforcement policy statement of last year goes considerably beyond the statute and requires indiscriminate reporting of minor and preliminary safety information and we have submitted detailed comments to that effect.

Mr. Chairman, the bottom line of my comments this morning is that we believe in the Consumer Product Safety Commission and in its ability to play an important role, regulating, where the marketplace will not, the safety of products.

We are satisfied that even when Commissioners and staff do not agree with our views, they are always open to our comments and arguments. This, not constant adversity, which perhaps typlifies the case many years ago, is the appropriate way to ensure product safety and I hope it will continue for many years to come. Thank you.

Senator KASTEN. Mr. Falk, thank you. You touched on this in your statement and in the past you have testified before the subcommittee on the CPSC's public information disclosure problems.

Do you still support the agency's approach to the implementation of section 6(b) with respect to Freedom of Information Act requests?

Mr. FALK. We support the amendments that were made in 1981, Mr. Chairman, yes.

Senator KASTEN. There are a couple of other questions of a technical nature that we may submit to you for the record and we will ask that you get back to us with answers in writing.

We thank you very much for your testimony here this morning.

Mr. FALK. Thank you, sir.

[The statement follows:]

STATEMENT OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

I am Bernard H. Falk, President of the National Electrical Manufacturers Association, and I am testifying today in support of the reauthorization of the Consumer Product Safety Commission.

NEMA represents an industry with a history of safety—since the first electrical products were introduced manufacturers have worked closely with sellers, installers, inspectors and government, producing a distinguished safety record through voluntary standards and codes. We regard the Consumer Product Safety Commission as a partner in these efforts.

Our approach to the Commission has always been at the same time cautious and cooperative. Cautious because, after all, the CPSC is a regulatory agency with powers to affect the design, manufacture and distribution of electrical products. Yet cooperative because, even when we do not agree on the appropriate methods, we share a common commitment to the safety of electrical products. Thus, our relationship can be adversarial on the one hand—battling the Commission over a proposed rule or procedure—while NEMA members and Commission staff are meeting to discuss technical solutions to other problems. Our technical resources, and knowledge of the industry and its products, have always been at the Commission's disposal, in what we believe to be the only sound way to regulate through cooperation.

Where we have differed with the Commission in recent years has been largely on procedural matters. Because of the CPSC's special stature and public image as defender of the consumer, its pronouncements carry weight in the media and the public. This imposes a special responsibility on the agency to ensure that its disclosures are accurate and fair. I testified in 1981 and 1983 on the Commission procedures on information disclosure. In the last two years, regulations have been put in place and NEMA, along with other industries affected by Commission actions, are gaining experience in working with them.

Let me comment briefly on several of the Commission's ventures of the last two years, to illustrate why I believe we have the proper government-industry balance.

Responding to concern about the safe use of electrical products, NEMA and the Commission began discussions several years ago about a public information program on electrical safety. Today is the first day of the second annual Electrical Safety Awareness Month, the repeat performance of an especially successful outreach effort by the Commission and industry. To get things started last year, NEMA and other industry organizations helped write an Electrical Home Safety Audit checklist, and put up funds to print half a million of them for Commission distribution. Even the signature emblem, with its message: "Electricity—Handle With Care" was designed and produced by NEMA and given to the Commission for its unrestricted use.

Another recent issue in which we've shared technical data and information on standards concerns certain electronic controls for consumer products. Last summer, the Commission convened a group of organizations, NEMA included, to discuss the safety aspects of microcircuitry in consumer products. There was no proposed rule, no pending product action—just an exchange of information to help all parties understand some important advances in technology, and how those changes might affect product safety. We are pleased with this Commission's willingness to maintain such open dialogue with the private sector, and will continue to participate.

In other areas we've taken issue with Commission proposals the last couple of years. As a major developer of voluntary standards, we were concerned about a proposal to establish a formal system for recognizing such standards. It's not that we oppose government use of voluntary standards—quite the contrary—but we sincerely feel that the CPSC has at its disposal the means to promote voluntary standards in a number of ways, without establishing a systematic and inflexible approach. While the Commissioners voted down the earlier proposal, discussions continue on the role of voluntary standards in consumer safety regulation, and we expect to be participating.

We also look forward to Commission deliberation on an April 6, 1984 Statement of Enforcement Policy on Substantial Product Hazard Reports. Many NEMA members are subject to Section 15(b) of the Consumer Product Safety Act which sets forth conditions under which manufacturers must report information indicating potential product hazards. NEMA believes that the enforcement policy statement goes considerably beyond the statute and requires indiscriminate reporting of minor and preliminary safety information and we have submitted detailed comments to that effect. NEMA and its members believe that the intrepretive regulations issued by the Commission in 1974 and the later refined regulations issued in 1978 are, in general, effective, workable and fair. Our recommendation to the Commission in discussions and in our comments has been to amend the statement or revoke it in its entirety. A copy of our detailed comments are attached to my testimony and I would appreciate having them submitted for the record.

The bottom line in my comments this morning is that we believe in the Consumer Product Safety Commission, and in its ability to play an important role, regulating—where the marketplace will not—safety of products. We are satisfied that, even when Commissioners and staff do not agree with our views, they are always open to our comments and arguments. This, not constant adversity, is the appropriate way to ensure product safety, and I hope it will continue for many years to come.

Senator KASTEN. Our next witness is Mark Silbergeld, the director of the Washington office of the Consumers Union. Mr. Silbergeld?

## STATEMENT OF MARK SILBERGELD, DIRECTOR, CONSUMERS UNION

Mr. SILBERGELD. Thank you very much, Mr. Chairman. I certainly appreciate the opportunity to express our views on this important matter. I will submit my written statement for the record and simply summarize at this point.

Senator KASTEN. Without objection, so ordered.

Mr. SILBERGELD. The subcommittee has already touched on the question of the adequate authorized appropriation level and it seems clear to me that while Chairman Scanlon is very brave in holding the administration line on $33.7 million, that he certainly mustn't be following the press reports on the improbability of a

Federal pay cut. And in addition there are other matters which render that figure inadequate.

One is that the Commission is not getting the money it expected to get in cost sharing from other agencies to carry out the responsibilities under the Cigarette Safety Act, at least that is my understanding.

And another is that if the subcommittee acts to put money, either in this authorization bill or in a separate bill, to restore jurisdiction over fixed site amusement rides, without increasing the appropriation to cover that expense, that in effect is another hidden budget cut.

All told, the committee must remember that it need not set an authorized appropriation level that is no higher than the amount, that the Appropriations Committee would enact in an appropriations bill.

There should be headroom for a supplemental, should they be necessary, either because the Commission continues to foot the entire bill for cigarette safety or because the pay cut—proposed pay cut—doesn't fly with the Congress or because additional responsibilities are added or restored to the Commission's jurisdiction.

I calculate a minimum adequate authorized appropriation at $38 million. And that I must footnote by stating, restating, what Commissioner Statler has stated—the Commission in effect in real dollars is getting less than half of what it got in 1974.

And so I strongly urge the committee to go up from $33.7 million to at least $38 million.

I also note that OMB apparently is seeking to once again cut the authorized personnel level of the Commission. This is in effect, a kind of a hidden budget cut and in some ways flouts the intent of the Congress. It is true that the Commission can spend the portion of the appropriation that it doesn't spend on personnel for nonpersonnel costs but it means that OMB is forcing the Commission to reprogram its appropriation without going to Congress.

Although such actions are unusual—I believe that hearings in the past have documented that they are not unique—I would strongly recommend that you consider a personnel floor at the present staffing level so that Congress and not OMB controls the Commission staffs for the coming year.

With respect to the length of authorization, the Commission has been operating without an authorization since the 1981 authorization expired on October 1, 1983. For some time previous to that it has been on a recurring 2-year authorization, reauthorization or reauthorization hearing schedule.

Again, that reprograms resources and redirects attention away from programs and to the legislative reauthorization process. I strongly urge that you consider a longer period—I would recommend 5 years.

I think that while the Commission is not performing as I would have it perform substantially because of budget cuts, and to some degree because of doing a somewhat different attitude toward mandatory standards than I might recommend, the Commission is performing in a manner that is not controversial, I think, with much of the Congress or with many of the regulated parties.

And I think it is time to set aside the attitude that if the Congress doesn't review the Commission every two years, it is going to go off on some tangent that is legislatively unacceptable. Give them the breathing space they need.

With respect to section 6(b), another question you have already addressed, we find the provisions to be unduly restrictive and in my prepared testimony I cite two instances in which Consumers Union was requested for information. In one case, drain cleaners and in another, kerosene heaters.

And what we got is this: Under the Freedom of Information Act an agency is allowed 10 working days to respond and an automatic 10 days extension. In approximately 4 months after each of those requests we got a response with the information about the specific product and manufacturer deleted in order to expedite the response. In short that is not adequate.

Not only did it take 4 months to do what other agencies can do in 20 working days, but we didn't get much of the information, including, in one case death, certificates which are public documents in States in which they were issued when they were originally issued.

And I believe that the committee should require of the Commission a report to the appropriate committees on the way that 6(b) is affecting the Commission's Freedom of Information request response and the backlog that it is experiencing.

Thank you, Mr. Chairman.

Senator KASTEN. If additional funding were available, what additional projects or tasks would you suggest that the CPSC undertake?

Mr. SILBERGELD. Well, I think I would probably like to submit that answer in writing because I would like to go back through the Commission's budget deliberations and take a closer look again at what was cut.

But I do note right off the bat that there is a lot less activity in the area of chronic toxicological hazards than I think the Commission should be doing at this point.

I would be very happy to submit a list of items, that should get higher priority with higher funding and I would submit that when I return my corrected transcript, Mr. Chairman.

Senator KASTEN. Without objection. What is your view of the agency's approach to the dangers of ATV's, the all terrain vehicles?

Mr. SILBERGELD Our technical department has not critically reviewed the agency's action with respect to that and it would be they and not I who would take the initial cut at looking what the Commission is doing.

Again I will ask them to take a look at that and see if I can get a response in time to make the closing of the record. But I think it is clearly an emerging hazard which requires very substantial resources because there have been a notable number of injuries and deaths involved and it certainly deserves high priority.

And to get back to the question of the authorized amount of appropriation, that should not have to come by reprograming dollars away from other important activities that the Commission is doing.

Senator KASTEN. We thank you for your testimony. There are a couple of other questions that I have that we may submit for the

record and we look forward to your answers on the questions that we just raised. Thank you very much for your testimony and we look forward to working with you in the coming year.

[The statement follows:]

STATEMENT OF MARK SILBERGELD, DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

Mr. Chairman and members of the Subcommittee, Consumers Union [1] appreciates this opportunity to present our views on reauthorization of the U.S. Consumer Product Safety Commission. This agency has the vital mission of acting to reduce consumer injury from products in and around the household. The degree to which it achieves the objectives that the Congress has set for it has a substantial effect, therefore, on the health and safety of all Americans.

Regrettably, the resources that the CPSC has been given to do its job have been reduced drastically over the past few years. And legislative battles over reauthorization of the agency have consumed additional resources needed for its basic safety functions. Further, the CPSC's indirect effect on safety through the provision of information on potentially hazardous products has been reduced by unfortunate restrictions on that function. We urge the Subcommittee to examine these issues carefully in the course of this reauthorization.

AMOUNT OF AUTHORIZED APPROPRIATION

The CPSC has requested $33.7 million to be appropriated for FY 1986. That amount clearly is insufficient, even assuming the continuation of a "bare bones" funding policy for the agency, and should be increased to at least.

In FY 1974, the CPSC had an appropriation of $30.9 million. In constant dollars, an equivalent appropriation today would be almost $71 million. Thus, the agency's request is for less than half of their appropriation twelve years ago. While I doubt that the Congress is about to thrust into the agency's Treasury account great unrequested sums of money at the very time you are seeking ways to reduce the budget deficit, I would strongly urge the Subcommittee to hold oversight hearings in the near future to examine the impact of this drastic reduction in funding on public health and safety.

In addition, $33.7 million will not meet the agency's needs even under the current operating philosophy. That amount assumes implementation of the Administration's proposed 5% federal pay cut. The pay cut is unlikely to occur. So the authorized appropriated needs to be increased by $1.3 million to meet the more likely eventuality of a federal employee salary freeze, and by even more if federal employees are to receive any salary increase.

In addition, the $33.7 million appropriation request assumes that the Commission will, as it is authorized to do by law, fund its required activities under the Cigarette Safety Act substantially out of funds appropriated to other health and safety agencies. But those agencies are not making the requisite funds available to the Commission, and so to meet its responsibilities to the Congress the Commission requires an additional $1.5 million.

This brings the needed appropriation authorization up to $36.5 million. But the Commission's "bare bones" appropriation requirement may not stop at that figure either. Some Members seek to restore the Commission's jurisdiction over fixed-site amusement rides. If such a provision becomes law, the CPSC will neet to spend some additional sum to investigate accidents associated with this product. If no additional appropriation is made to meet this need, CPSC will have to reprogram it from other activities. That would make the amendment a hidden further reduction in the Commission's appropriation. While we support a restoration of the CPSC's jurisdiciton, we urge the Subcommittee to assure "headroom" in the authorized appropriation amount sufficient to cover the expenses of this activity.

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education and counsel about consumer goods and services and the management of family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications, and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 3 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

All in all, summing the requested appropriation, the additional amount needed to support salaries at freeze rather than proposed reduction levels, the amount needed to meet Cigarette Safety Act responsibilities and some additional margin needed to permit supplemental appropriations for such possible added responsibilities as fixed site amusement rides, we believe that the authorized appropriation should be no less than $38 million. And I must re-emphasize, Mr. Chairman, that this amount assumes a continued minimalist philosophy toward the public health and safety with which we cannot agree.

PERSONNEL FLOOR

As I have indicated, the CPSC has realized a cut in real dollar resources in excess of fifty percent over the past few years. There are no reports that the Office of Management and budget seeks to further undercut the Congressional Prerogative of determining resource levels by reducing the agency s personnel positions by eighteen additional positions in FY 1986, from 568 employees to 550 employees. This would compare with the all-time high of approximately 900 agency employees. Such an action can only result in yet less safety for the American consumer, as well as a further intrusion on Congressional power to determine the level of agency activity.

Therefore, we recommend that the reauthorization bill passed by this Subcommittee set a personnel floor of 568 employees.

LENGTH OF REAUTHORIZATION

The CPSC has been operating without authorization legislation since October 1, 1983. Prior to that time, it had operated on a series of two-year authorizations. Short-term authorization drains resources from the offices of the Commissioners, the Office of the Executive Director and from the various program managers. Because of this drain, it is a form of hidden budget reduction.

We recommend correction of this situation by an authorization of the Commission for a period of five years.

SECTION 6(b) REQUIREMENTS

Since 1981, Section 6(b) of the Consumer Product Safety Act has put severe strictures on the Commission's response to any Freedom of Information Act request, the response to which would permit the public to identify a manufacturer or private labeler. In any such instance, the firm involved is given substantial rights to limit the Commission's response. And the process involved may delay the CPSC's response to the FOIA request far beyond the twenty working days (including one extension of right) otherwise permitted by the Freedom of Information Act. Consumers Union has had specific experiences in which these provisions have prevented our obtaining timely and full disclosure of agency records that related specifically to Consumer Reports articles in preparation or advocacy before the agency on the safety of a particular category of product.

In one instance, the response to a request for safety information on drain cleaners was received almost four months after the request was filed. And the response was received without any of the information possessed by the CPSC that would have permitted identification of the products involved (included the death certificate file on victims of drain cleaner poisoning) "so that your request could be expedited". (Request No. S210186).

In another instance, the agency response required more than four months. This response omitted any information that would have permitted identification of brands involved in kerosene heater accidents, even though the material involved, as it turned out, was prepared by a state agency. (Request No. S-211027.)

We believe that these experiences must represent but a small sampling of only the tip of the iceberg. We strongly urge the Subcommittee to include in the authorization bill a requirement for the CPSC to submit to the Congress within three months a report on the effect of Section 6(b) on FOIA disclosure of product safety information and on the Commission's response time to Freedom of Information Act requests.

Mr. Chairman, we appreciate the opportunity you have afforded for Consumers Union to present its views on reauthorization of the Consumer Product Safety Commission. We urge the Committee to quickly act upon a bill that would provide for a five-year reauthorization with no less than $38 million authorized to be appropriated in the first of the authorization, and one which takes into account our additional recommendations. Thank you very much.

Senator KASTEN. Our next witness is Mr. John Graff, the executive director of the International Association of Amusement Parks & Attractions. Mr. Graff.

## STATEMENT OF JOHN GRAFF, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF AMUSEMENT PARKS & ATTRACTIONS

Mr. GRAFF. Thank you, Mr. Chairman. I am John Graff, executive director of the International Association of Amusement Parks & Attractions, a trade association representing some 1,800 members located in 37 countries around the world.

We appreciate the opportunity to testify once again on the question of Federal Consumer Products Safety Commission jurisdiction over our parks and attractions. I, like the other people who have preceded me, would simply summarize here the more extensive statement that we have submitted to the committee.

Senator KASTEN. Without objection, so ordered.

Mr. GRAFF. It was our industry which asked Congress in 1981 to clarify whether it intended the CPSC to apply to amusement park rides. After taking testimony on both sides of the issue and reviewing our safety record, Congress said it did not intend the act to apply to such rides.

Nothing has happened since that time to refute the logic of that decision. The safety record of our industry is still extraordinary, as it was in 1981. I am delighted to see in things like Senator Simon's press release this morning a kind of grudging acknowledgment that this is not a major problem.

Second, the problems inherent in applying the Consumer Products Safety Act to something unusual and often unique like an amusement ride are unresolved and that was part of the problem in 1981. We were in court all over the country because of the difficulty of applying that law to rides.

Third, the ability of the CPSC to regulate effectively in this area is still lacking.

Using CPSC injury estimates which have been referred to already here today, we can very quickly get this problem into some perspective. As Chairman Scanlon pointed out, about 1 in every 2½ million park visitors, assuming the statistics of the Commission are accurate, each year may be hospitalized overnight due to an injury.

The hospitalization rate per ride taken is even lower, something like 1 in 8 million. Amusement park ride fatalities, as Mr. Simon's figure show, occur at the rate of 1 in every 65 million visits or every 350 million rides over the last 10 years.

I want to underscore that insurance company reports as well as independent surveys we have had made show that the overwhelming majority of those accidents that do occur are unrelated to ride defect or design defect and bad maintenance or anything like that. They are the result of rider misbehavior.

That record reflects, among other things, the intensive inspection of rides presently being carried on by operators and by State, local, and insurance company inspectors. Again, it has already been mentioned this morning that 85 percent of the parks in this country are presently inspected by some outside authority.

This year alone 12 additional States have ride legislation in their State legislatures. If there is a window of vulnerability here, which I doubt, it is very quickly being slammed shut by effective State action in the legislative area.

In our full statement I discussed the most serious objection to CPSC, that of section 15(b) as applied to rides. This is not a minor problem. It threatens to engulf the Government and our industry in a multitude of lawsuits like those which prompted us to bring this issue to Congress in 1981.

Finally, we again raise the issue of the Commission's inability to regulate effectively in this area. Two Commissioners last year testified to the House expressing grave doubts that the Commission could do anything to improve our safety record and questioned the wisdom of allocating precious resources to that effort. Those concerns have been expressed here this morning by others.

If this is true, what will jurisdiction accomplish? It is said that the Commission needs to collect reports and disseminate information on accidents that do occur. This is a false issue. Every injury is the source of great concern to our industry. When those rare accidents do occur our industry responds instinctively.

Word goes out at once, if it is something involving equipment failure. Within 1 hour of the time that the accident involving the ride known as the Edge occurred in Illinois last year, the accident which prompted Senator Simon to introduce his legislation last year, every such ride in the country was closed down and remained closed down for weeks by the voluntary effort of our industry as word spread that there may be something wrong with this ride.

When the Enterprise accident occurred at the Texas State Fair to which Mr. Statler made reference to this morning, there were park people from other areas of the country that beat the Consumer Product Safety Commission to Texas to find out what was wrong, if anything, with that ride.

And although the Commission did not have jurisdiction over our parks, they sent their notice on the Enterprise action plan around to our parks, which I suspect had the legal effect that the Commission would have wanted it to have. In any event our parks had, on notice from the manufacturer and their own information exchange, made the necessary corrections to the Enterprise ride without the Federal Government having to come in and tell them to do so.

So for all of these reasons we continue to oppose CPSC jurisdiction over rides. We believe, however, that legislation has been offered which will enable Congress to deal with this matter in a reasonable manner. Congressman Henry Hyde, who as Senator Simon pointed out, sponsored CPSC legislation last year, has introduced House Joint Resolution 230 on the House side and I understand that Senator Danforth has introduced legislation, Senate bill 1032 on the Senate side, which would call for a temporary commission to look into this issue, to put it to rest once and for all time by establishing a temporary commission to study the adequacy of present State, local, and industry efforts, the need for Federal intervention and the form such Federal regulation should take if indeed it is deemed necessary.

One of the many things our industry has done in recent years is adopted a set of industry standards under the umbrella of the

American Society of Testing Materials in Philadelphia. Those standards can be looked at by this Commission and determined to either be adequate or in need of some kind of improvement.

Our industry welcomes this kind of an inquiry. Given the industry's safety record and the CPSC's level of involvement or likely level of involvement, even if it had jurisdiction, there is no reason to believe that an 18-month delay, while this study is made, is unwise or dangerous.

The study Commission proposal will take this issue out of the era of emotion and provide Congress with the information it needs and which is now lacking to make an informed and effective response on this issue.

Our industry can only stand to gain by that so we urge Congress to enact the substance of those legislative proposals.

Thank you, Mr. Chairman.

Senator KASTEN. Mr. Graff, could you elaborate on your views as to the section 15(b) reporting requirements that would be imposed by the CPSC jurisdiction over fixed site amusement rides?

Mr. GRAFF. I would like to point out in that regard that while the Simon bill exempts States from preinspection that have State or local ride inspection laws, all the other aspects of the Consumer Products Safety Act or most of the other aspects, including section 15(b), would apply to all parks wherever they are located, whether they have a State program or not.

There are a couple things wrong with this. One of the things that makes amusement rides different than anything else the Commission deals with is that the ride is located somewhere out in the countryside. When something goes wrong with it, it isn't a matter of bringing it into the Commission's headquarters for it to be looked at like toasters and everything else can be.

Those rides are maintained on a daily basis by people trained to do that. People don't do daily maintenance on their toasters, or stepladders, or whatever else it is. In the course of that maintenance, things are found which skilled maintenance people take care of, the belt is slipping, a bolt has dropped out, a piece is broken, whatever it may be.

It is entirely reasonable to assume under the way section 15(b) is written that many of those kinds of things that are found in routine maintenance and taken care of would have to be reported to the Commission because of the precise language of the statute that they might, had they not been caught, create a substantial hazard.

The Commission will be flooded with this kind of information as the parks attempt to protect themselves from the rather stiff civil and even criminal penalties under the statute for not reporting this kind of thing.

The Commission does not in the normal course of things go out and investigate these reports. It is my understanding, I think it came out last year in the House, that less than 10 percent of such reports are subject to field investigation by the Commission.

So you have all of these things reported. The Commission does not come and inspect or give you a clean bill of health on them. You go on and you operate your ride. Should something happen, the plaintiff's lawyer is going to have a field day with the fact that

all of these things have been reported and none of them have been cleared by the Commission.

And that is why I say we are going to be involved in lawsuits all over the country. The other thing is, I used this example last year and I think it is a good one, the most accidents that happen in the park occur on the carousel.

Now, there isn't any doubt that if the carousel was designed for something other than to give delight and amusement to people, you would do some things differently. You could put a fence entirely around the horses. You could seatbelt people on. You could give them crash helmets.

You can do all of these kinds of things. Is it a design defect in carousels that people fall off more than they get hurt on any other rides? Do you report all the carousels in the country as a potential hazard? Again I ask what you have done to your potential liability when you have to do that to protect yourself from statutory penalties.

I just contend that this is entirely unnecessary, given the magnitude of the problem. And I don't make light of injuries. Those are the kinds of things that will get us back into court which is where we were when your committee and the Congress took us out of this thing in 1981.

Senator KASTEN. Mr. Graff, we thank you. There are a couple of other questions that we may to submit to you. Hopefully you can get back to us in writing.

[The statement follows:]

STATEMENT OF JOHN R. GRAFF, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF AMUSEMENT PARKS & ATTRACTIONS

Mr. Chairman, Members of the Subcommittee, I am John Graff, Executive Director of the International Association of Amusement Parks and Attractions, a trade association representing some 1800 members located in 37 countries around the world.

About 400 of those members are parks or attractions located in this country. That number includes all the major theme parks and several hundred family-owned businesses, some of whom have been providing wholesome family entertainment for over a hundred years.

We appreciate the opportunity to testify once again on the question of federal Consumer Product Safety Commission jurisdiction over our parks and attractions.

It was our industry which brought this issue to Congress in 1981. There were at that time several lawsuits in the federal courts involving the application of consumer product law to amusement rides. Those suits were costing both the government and our members a great deal of money.

We asked Congress to clarify whether it intended the CPSA to apply to such rides. Contrary to recent claims by proponents of federal jurisdiction, this decision was not slipped through Congress. Testimony was taken on both sides of the issue. The safety record of the industry was reviewed. The matter was explained on the floor and in Committee reports.

At that time Congress said it did not intend the Consumer Product Safety Act to apply to our amusement rides.

Nothing has happened since that time to refute the logic of that decision.

The safety record of our industry is still extraordinary—as it was in 1981. The problems inherent in applying the Consumer Product Act to something like an amusement ride are still very real. The ability of the CPSC to regulate effectively in this area is still lacking.

Proponents of jurisdiction cite amusement ride accidents and CPSC injury estimates as the justification for federal regulation. We have testified previously concerning the methodology which makes those CPSC estimates unrealistically high. Studies for us show somewhat lower frequency rates. We will not, however, argue

over the figures. Even if one takes the CPSC figures as accurate, they hardly support the argument that this is a problem requiring federal intervention.

Those estimates as they relate to fixed location parks show that with an estimated park attendance each year of about 175–200 million people, only 1 out of every 2½ million visitors will be hospitalized overnight due to an injury.

Over 1 billion rides are taken, so that the hospitalization rate per ride is something like one in eight million.

Amusement park fatalities have occurred at a rate of 1 in every 65 million visits or every 350 million rides.

It cannot be emphasized too much that insurance company reports and our surveys indicate that the overwhelming majority of those ride accidents that do occur are unrelated to ride defect, bad maintenance or design. They are the result of rider misbehavior.

With such a safety record we are not afraid of inspection. Indeed, that record reflects the intensive inspection of rides presently carried on by the operators and by state, local and insurance company inspectors.

A survey of our parks last year showed that 85% of them are presently inspected by some outside authority—75% by state and/or local regulators and another 10% by professional inspectors hired by insurance companies. Many of them are inspected by all three.

There are, however, very troubling problems in applying the provisions of the Consumer Product Safety Act, particularly Section 15(b), to our rides.

In the course of the routine maintenance peformed on these rides many things are discovered which are repaired on the spot. It would be arguably necessary under Section 15(b) to report all or many of these findings to CPSC.

Not only would this flood the Commission with reports but it would create enormous legal problems for the parks.

CPSC does not and could not investigate all such reports. If it did, it is against the Commission's policy to issue "seals of approval" once an item has been determined to have been corrected.

Thus the park would have most of its rides on report because of its desire to avoid 15(b) violations. It gets no clean bill of health from the Commission. If an accident should occur, the plaintiff's attorney will have a field day with the fact that the ride had been reported to the CPSC and never cleared.

The reality of this situation was apparently acknowledged by the House last year when it included in the report accompanying H.R. 5790 language to the effect that ordinary maintenance need not be reported to the CPSC under Section 15(b).

Report language is not an adequate remedy for this defect in applying the CPSA to rides. Nor would putting that same language into a statute eliminate the dilemma for the park operator.

Finally, we again raise the issue of the Commission's present inability to regulate effectively in this area.

Both Commissioner Scanlon and Commissioner Armstrong have in previous testimony expressed doubt that the Commission could improve the safety record of our industry and questioned the wisdom of allocating precious Commission resources to such an effort.

It is significant that none of the Commissioners who have in the past urged jurisdiction have come to Congress with a specific request for personnel or funds to inspect rides.

The Commission has exerted jurisdiction over carnival rides for nearly 10 years and in all those years it has never inspected a single ride except in the aftermath of an accident.

There is no preventative inspection program for carnival rides and there would almost certainly be none under the CPSC jurisdiction legislation being proposed now for our parks in the absence of increased staff and funds for that purpose.

To our knowledge no one at the Commission has ever even attempted to assess the cost of such a program.

So what will jurisdiction accomplish? Much is made of the need to report and disseminate information on accidents that do occur.

This is a false issue. When there is a serious accident, there is no want of publicity. For reasons that still baffle us, a ride accident will make the network news when many more serious accidents that same day go unreported.

When those accidents do occur, our industry responds instinctively. Word goes out at once if it is something involving equipment failure. Within 1 hour of the time the accident involving the ride known as the Edge occurred in Illinois last year—the accident which I understand gave rise to H.R. 5790—every such ride in the country was shut down voluntarily as the manufacturer and park operators spread the word

that there might be a problem. They stayed shut down for weeks until all tests and reports were completed.

Much has been made of the CPSC's alleged inability to enforce its corrective action plan for the Enterprise ride against our parks. Two things should be noted.

The first is that after the Enterprise accident occurred at the Texas State Fair two years ago, the industry responded as it did in the case of the Edge. Word spread immediately. Some parks sent people to Texas to see what, if anything, was the problem. Corrective action was voluntarily taken.

Second, CPSC sent its corrective action plan to our parks even though it did not have jurisdiction over those rides. Such notice, from a legal standpoint, no doubt accomplished everything the Commission would have wanted or expected.

After an accident has occurred no one needs the federal government to come in and order them to find out what went wrong.

For all these reasons we have opposed and continue to oppose CPSC jurisdiction over park rides.

We believe, however, that a way has been offered which will enable Congress to deal with this matter in a reasoned manner.

Congressman Henry Hyde, who last year co-sponsored H.R. 5790 extending jurisdiction to parks, has introduced H.J. Res. 230 which our industry endorses.

This Resolution provides for a temporary Commission to study the adequacy of present ride regulation, the need for federal intervention and the form such regulation should take if deemed necessary. Our industry has recently adopted a comprehensive set of ride safety standards produced by the American Society of Testing and Materials. The Commission should review these standards for adequacy and effectiveness. The Commission will report its findings to the President and Congress within 18 months.

We welcome this inquiry. We believe it will confirm our belief that no federal program is necessary or would be effective to further reduce ride injuries.

However, if we are wrong and the Commission recommends either a federal role or changes to the present standards and regulatory scheme we will welcome and deal honestly with those recommendations.

Given the industry's safety record and the Commission's level of involvement—or likely level of involvement even if it had jurisdiction—there is no reason to believe that an 18 month study is an unwise or dangerous delay.

No one has a greater stake in ride safety than we do. An enormous amount of time and resources are spent constantly improving our record. If we were unable to assure the public concerning safety we would soon be out of business.

We believe our industry has been highly responsible and effective in its approach to safety. In a sense we are the victims of our own good record. Serious accidents are so rare that they command widespread media attention.

The Commission proposal will take this issue out of the area of emotion and provide Congress with the information it needs to make an intelligent decision.

We can only stand to gain by that so we urge Congress to enact the substance of H.J. Res. 230.

Thank you very much.

Senator KASTEN. On behalf of the Consumer Subcommittee, I would like to thank all the witnesses here today. We have heard thoughtful comments from all of you. The record of this hearing will be held open for 1 week for additional statements and so that members of the committee may submit additional questions of the witnesses to be answered for the record.

I hope all of you will be able to get back to us with the questions as soon as possible within the allotted time period. We thank all you. The hearing is adjourned. 10:50 a.m.

[Thereupon, at 10:50 a.m., the hearing in the above-entitled matter was adjourned.]

# ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

PORTABLE POWER EQUIPMENT MANUFACTURERS ASSOCIATION,
*Bethesda, MD, March 12, 1985.*

The SECRETARY,
*U.S. Consumer Product Safety Commission, Washington, DC.*

DEAR SECRETARY: The Portable Power Equipment Manufacturers Association (PPEMA) is the national, non-profit organization representing manufacturers of chain saws, monofilament trimmers and brushcutters, and their component parts and accessories.

PPEMA supports the Commission's effort to clarify its enforcement intentions regarding the important issue of reporting substantial product hazards under Section 15 of the Consumer Product Safety Act. PPEMA's support is based upon the belief that it is imperative for a regulatory agency such as the U.S. Consumer Product Safety Commission to make a good faith effort to explain its policies to those who are subject to those policies. Only by ensuring a sound and adequate understanding among all interested parties may enforcement policies be carried out effectively. If the Commission's position is left unclear, misunderstandings, with their attendant consequences, are inevitable.

We further believe that the Commission's explanation of important regulatory policies should be based upon actual facts and circumstances whenever possible, rather than on unrealistic hypotheticals. Finally, interested members of the public should be provided an opportunity for review of the Commission's policy prior to implementation.

CPSC'S STATEMENT OF ENFORCEMENT POLICY (APRIL 1984)

We believe the Commission should have provided interested members of the public with an opportunity to review and comment on the April 1984 Statement of Enforcement Policy. Moreover, the Commission missed an excellent opportunity to provide meaningful guidance to those subject to its policies by relying on actual case histories rather than hypothetical examples.

We cannot understand why the Commission's Statement of Enforcement Policy did not rely on over ten years of Commission experience in administering matters relating to substantial product hazards. If the Commission had used this experience effectively, its policy could have been based upon actual case histories with helpful indications of appropriate Commission action applicable to all future cases involving similar facts. In short, by relying on case histories rather than hypothetical examples, the Commission could have provided specific and realistic guidance on the criteria of "reasonableness." Moreover, an enforcement policy based upon actual circumstances would provide a sounder foundation for modification of the policy when significantly different facts are presented.

The Commission has a wealth of information available to it concerning the administration of Section 15. This information should be used to provide something more useful than hypothetical examples. Such reality-based systems are used effectively by the Department of Justice through its Business Review Procedures, and by the U.S. Federal Trade Commission through its Advisory Opinion procedures.

HYPOTHETICAL EXAMPLE (A)

We cannot believe that Congress ever intended for the Commission to use product liability complaints as a basis for requiring notification pursuant to Section 15. When a product liability claim is filed, it is completely unsubstantiated—numerous important issues of fact must be resolved before any conclusion regarding the product's safety is appropriate. We simply do not believe that the Commission was ever provided with the authority to require Section 15 notices to be filed on such a questionable basis.

HYPOTHETICAL EXAMPLES (B)–(D)

We do not believe that the facts set forth in these hypothetical examples warrant notice to the Commission of a possible substantial product hazard. Whether considered individually or collectively, these examples set up an unworkable standard of "reasonableness," amounting to the proposition that whenever any information comes to a company's attention, of whatever nature, character or source, as long as there is any relationship with a potential injury, a report must be filed with the Commission. We do not believe the Consumer Product Safety Act can be so interpreted.

CONCLUSION

We recommend the following action by the Commission. First, the Statement of Enforcement Policy should be withdrawn or suspended. At a minimum, hypothetical examples (A)–(D), should be deleted, because (a) regulatory policies should not be based upon hypothetical examples where actual facts are available, and (b) the Statement of Enforcement Policy exceeds the authority provided by the Consumer Product Safety Act. Second, the Commission should conduct a comprehensive review of its administration of this policy since 1973. Third, based upon this comprehensive review, the Commission should publish a series of actual case histories, summarizing relevant facts, in order to provide specific guidance on the criteria of "reasonableness." Fourth, the Commission should update this enforcement policy on a regular basis. Fifth, the public should be provided with an opportunity for review and comment prior to implementation of any Policy Statement of Enforcement on Substantive Product Hazards.

Respectfully submitted,

DONALD E. PURCELL, *President.*